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ACTS

PASSED AT THE ANNUAL SESSION OF THE

GENERAL ASSEMBLY

OF THE

STATE OF ALABAMA;

BEGUN AND HELD IN THE CITY OF TUSCALOOSA, ON THE FIRST
MONDAY IN NOVEMBER, 1840.

ARTHUR P. BAGBY, GOVERNOR.
J. L. F. COTTRELL, PRESIDENT OF THE SENATE.
SAMUEL WALKER, SPEAKER OF THE HOUSE OF REPRESENTATIVES.
R. A. BAKER, SPEAKER OF THE HOUSE OF REPRESENTATIVES.

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LAWS OF ALABAMA.

[No. 1.] AN ACT

To alter the mode of assessing and collecting the Taxes for the County of Pickens, and for other purposes.

1841.

Duty of Judges, &c.

Proviso.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That it shall be the duty of the judge of the county court and commissioners of roads and revenue, for the county of Pickens, at the first commissioners' court for said county, after the first Monday in March in each and every year, (provided there be no commissioners' court before the third Monday in May, the judge of the county court may call a court for that purpose,) to appoint one of the justices of the peace in every beat in said county, to assess all the property subject to taxation, in their respective beats, according to the law now in force: *Provided, however,* that in the absence of the judge, the commissioners of roads and revenue, or any three of them, may make the above appointment.

Clerk's duty.

Sec. 2. *And be it further enacted,* That it shall be the duty of the clerk of the county court of said county, to transmit to each of the justices so appointed, on or by the fifteenth day of June, a list of the property subject to taxation, with a formula of the manner of the assessment, under the direction and supervision of the judge of the county court.

Bond of Assessors.

Proviso.

Sec. 3. *And be it further enacted,* That the persons appointed assessors shall, before they enter upon the duties of assessors, give bond with approved security, in the sum of two hundred dollars, payable to the county treasurer, or his successor in office, conditioned, faithfully to discharge the duties of their office, and shall take an oath to perform the same to the best of his ability: *Provided,* that when the person appointed shall be a justice of the peace, and he has given bond as now provided for by law, for the faithful discharge of the duties of magistrate, it shall not be necessary for such person to give a new bond; but a failure to discharge the duties of assessor faithfully, shall work a forfeiture of his bond as justice, and may be sued upon as often as violated, and recovery had for the use of the county.

Vacancies.

Sec. 4. *And be it further enacted,* That should a vacancy occur in any beat, by death, resignation, refusal to act, or other cause, the judge of the county court, with, or without the commissioners, may supply the vacancy, by the appointment of another justice of the peace, or some other person.

Assessors to advertise.

Sec. 5. *And be it further enacted,* That it shall be the duty of the assessors so appointed, after advertisement as now prescribed by law, to proceed to assess all the property liable to taxation in their respective beats, with the names of all and every person owning such property, or who are liable to taxation under the existing laws.

To make return.

Sec. 6. *And be it further enacted,* That the assessors of taxes appointed as above, shall, on or before the second Monday in August, in each and every year, make out a list of all persons, the amount of their property, that are subject to taxation, in alphabetical order, and return the same, duly certified, to the clerk of the county court of said county.

Duty of Clerk of County Court.

Sec. 7. *And be it further enacted,* That it shall be the duty of the clerk of the county court in each and every year, by the first of September, to consolidate the returns of all the assessors in the county, in a book to be prepared and kept by him, for that purpose, and subject to the inspection of every person who may wish to examine it: and it shall further be his duty to make out two copies thereof, with the amount in money, run out, both in the book and the copies, one of which he shall deliver to the county treasurer, and the other to the tax collector, and take their receipts for the same, which he shall file in his office; and for these services, he shall be entitled to such compensation as the judge and commissioners may deem just, to be paid out of the treasury of the county, on the exhibition of said receipts.

Compensation to Assessors.

Sec. 8. *And be it further enacted,* That said assessors shall receive for their services respectively, four per cent. on the amount assessed, to be paid by the tax collector of the county, out of the tax of said county, upon the certificate of the clerk being presented, that the holder has made due return of his assessment, which certificate shall express the amount of such assessment.

On failure to give in tax.

Sec. 9. *And be it further enacted,* That the different persons appointed under the provisions of this act as assessors, shall be regulated and governed by the law now in force: *Provided however,* that if any person shall fail to give in a list of his or her taxable property, by the first Monday in August, in each and every year, he, she, or they so failing, shall be liable to double assessment; and it shall be the duty of the assessor, so to render it, according to the best of his knowledge.

Sheriff to collect &c.

Proviso.

Sec. 10. *And be it further enacted,* That the tax collector, who shall be the sheriff of said county as now prescribed by law, shall proceed to collect all taxes as assessed, and make due returns of all moneys by him collected, by the first day of January in each and every year: *Provided,* that upon a settlement with the county treasurer, the tax collector shall be allowed to retain in his hands six per centum on the amount by him actually collected and paid over.

Sec. 11. *And be it further enacted*, That it shall be the duty of the tax collector to advertise in the manner now prescribed by law, and attend to each beat at least twice, for the purpose of receiving the taxes between the first of September and the first day of December, in each and every year; and all those who do not pay up their assessments previous to the first of December, the tax collector is hereby authorized and empowered, to proceed against them, in person or by deputy; and make the money by distress and sale of property, and to charge constables' costs for the same.

Collector to advertise and sell.

Sec. 12. *And be it further enacted*, That the books of assessment herein required to be made out, shall have the force of executions, and sums due therein, after the aforesaid first of December, may be collected accordingly.

Books to have force.

Sec. 13. *And be it further enacted*, That the tax collector shall be held bound for the assessment, and shall not be allowed any thing for insolvencies, unless first allowed and certified by the judge of the county court, which he shall do, if done at all, by the fifth day of January in each and every year, but subject to the approval of the commissioners; and it shall be the duty of the treasurer for said county, to carefully examine the collector's collection book, and compare it with the assessment, and report the result of such examination, with a list of the insolvencies as certified by the judge to the first commissioners' court in each and every year, in said county; and on failure of the tax collector to make complete settlement with the county treasurer, which he is hereby required to do, before said first commissioners' court, it shall be the duty of the treasurer, by giving the tax collector one day's notice of the same, to proceed against him by motion before said court, whose duty it shall be, after hearing such evidence as may be offered, to render judgment against such collector for all such sums as he may have failed to collect, as in the judgment of the court may be proper and just, and collect accordingly; and for failure of the treasurer to perform the duties required of him in this section, he may be fined at the discretion of the court, in a sum not exceeding two hundred dollars.

Collector responsible for taxes, &c.

Sec. 14. *And be it further enacted*, That it shall be the duty of the commissioners of roads and revenue, or a majority of them, at least once in every year, to carefully and fully examine, so far as relates to the funds, dues and accounts of the county, the books, accounts and vouchers of the clerks of the circuit and county court, and the books, accounts and vouchers of the sheriff and treasurer of said county: and it shall be the duty of the aforesaid officers, to make a full and complete exhibit of ever book, document or paper, that the said commissioners may demand, having any relation to the funds of said county; and on failure to make such exhibit, or any part thereof, without good cause, said officers, or any one of them, may be fined at a regular commissioners court, in a sum not exceeding five hundred dollars, to be recovered as other fines and forfeitures: and after such examination as may

Duty of Commissioners.

be satisfactory to said commissioners, they may take such action thereon as in their judgment may be proper for the interests of said county: *Provided*, the same be consistent with the laws of this State: and for these services, said commissioners shall receive such pay as is now allowed by law for other services.

Proviso.

Sec. 15. *And be it further enacted*, That the clerk of the circuit and county court, sheriff and treasurer for said county, shall pay interest on all sums of money improperly held in their hands, belonging to the county, unless released from the same by order of the commissioners' court.

Interest.

Sec. 16. *And be it further enacted*, That all laws or parts of laws, contravening and conflicting with the provisions of this act be, and the same are, hereby repealed.

Repeal.

Sec. 17. *And be it further enacted*, That it shall be the duty of the clerk of the county court to cause this act to be published for two weeks in the Pickensville Register, and charge the same to the county.

To be published.

Approved, January 2, 1841.

[No. 2.]

AN ACT,

To incorporate a Male and Female Academy at the Town of McDonald, in the County of Randolph, Alabama.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That Andrew Burnham, Robert Caskey, John D. Bowen, Jefferson Falkner, Robert Black, Alvis Q. Nicks, and Ephraim Carpenter, and their successors in office shall be, and they are hereby established a body corporate, by the name and style of the President and Trustees of the McDonald Academy; and by that name shall have power to receive donations, borrow money, purchase, have and hold, real estate, not to exceed the sum of thirty thousand dollars; which said charter shall expire whenever the sums so raised shall cease to be used for the purposes of education, in perpetuity, and sell the same; to sue and be sued; plead and be impleaded; and to recover all debts that may become due, owing, or belonging to said institution, as the property thereof.

Name and style.

To hold property.

Sec. 2. *And be it further enacted*, That the above named trustees, shall have power to appoint a President, Secretary and Treasurer, and such other directors or visitors as they may deem necessary or expedient for the good order, or well being of said institution, and to prescribe the duties of each; to grant such rewards, or confer such honors on graduates, as to them may seem expedient.

Officers.

Sec. 3. *And be it further enacted*, That vacancies which may occur in this board of trustees, from any cause, shall be filled by the remaining trustees.

Vacancies.

Approved, December 19, 1840.

[No. 3.]

AN ACT

To incorporate the Town of Decatur, in the County of Morgan.

Incorporated.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the town of Decatur in Morgan county be, and the same is hereby incorporated.

Limits.

Sec. 2. *And be it further enacted,* That the corporate limits of said town shall be as follows: Beginning at the Tennessee river, immediately opposite the Steam Factory, and extending toward the bed of said river so as to include sixty yards of said river, from low water mark; thence down the river, following the meanders of the same, so as to preserve sixty yards of the same, to a point immediately opposite the residence of Alexander Ross, so as to include the same; thence to the rail road, so as to include the residence of James A. Patterson; thence to the residence of Henry Bibb, including the residence of Simon B. Sykes and the residence of Henry Bibb, to the first point, so as not to include the Steam Factory.

Election.

Voters.

Sec. 3. *And be it further enacted,* That on the first Monday in March next, and on the first Monday in each and every March thereafter, an election shall be held by ballot, for one Intendant and four Councilmen, who shall hold their office for the term of one year, and until their successors in office shall be elected and qualified. The elections for said officers shall be holden in some public and convenient place in said town; and all persons qualified to vote for justices of the peace, and who shall reside within the corporate limits of said town, shall be entitled to vote. The first election shall be conducted by Benry Bibb, A. A. McCartney, William Jones, Archedemades Houk and William G. Stephenson, any two of whom, being first qualified before some justice of the peace, to conduct the said election fairly and impartially, shall be qualified to act; and their certificate shall be the evidence of election; and every succeeding election shall be holden by three persons to be appointed by the Intendant and Councilmen, any two of whom, first being qualified as above, shall be competent to conduct the same.

Name and style.

Powers.

Sec. 4. *And be it further enacted,* That the said Intendant and Councilmen, are declared a body politic and corporate, by the name and style of the Intendant and Councilmen of the town of Decatur, and by said corporate name shall be capable of suing and being sued, of pleading and being impleaded, in any manner of action, either in law or equity; that they shall have power to order and establish a common seal, and the same to break or alter at their pleasure; and shall have and exercise all powers and privileges incident to bodies politic and corporate.

Election of officers.

Sec. 5. *And be it further enacted,* That the said Intendant and Councilmen, shall elect a Town Marshall and a Treasurer, who shall take and subscribe an oath to perform their respective duties, faithfully and without partiality; and shall execute a bond to the Intendant and Councilmen, in such amount, and with such restrictions as they shall direct, conditioned for the faithful performance of their respective offices, which bonds shall be filed in the office of the Intendant; and every person aggrieved, may have recovery, by motion before said Intendant, where the sum does not exceed fifty dollars, or before the judge of the county or circuit court, where it does exceed that sum, on ten day's notice of said motion. And the said Marshal shall also take the oath now prescribed for constables, and shall have all the powers of a constable within the corporate limits of said town; shall assess and collect all taxes and fines imposed by the corporate authorities; shall execute every manner of process, returnable before the Intendant of said town.

Officers liable, &c.

Sec. 6. *And be it further enacted,* That the said Intendant and Councilmen, shall have full power to pass all laws and ordinances which may be necessary to preserve the good order of the town of Decatur; to hold real, personal and mixed estate, for the use of the town, not exceeding twenty thousand dollars in value; to establish rates of wharfage; to require the citizens of Decatur, or such class of them, as also of negroes, to do street work; to impose fines recoverable before the Intendant, for the violation of any town law or ordinance, not exceeding twenty dollars; to establish regulations with regard to all wharves, which may be necessary; to levy a poll tax on all white male citizens, over ten and under fifty years of age, not exceeding one dollar; and a tax of fifty cents on all negroes over ten and under fifty; and a tax not exceeding twenty five dollars on all free negroes or mulattoes; a tax not exceeding three dollars, on each pleasure carriage; a tax on all real estate, not exceeding twenty-five cents on each hundred dollars worth.

General powers.

Sec. 7. *And be it further enacted,* That the Intendant shall have all powers of a justice of the peace, and receive the same compensation now allowed to justices: *Provided,* his jurisdiction shall be confined to the corporate limits of said town. And the said Intendant shall receive an annual salary, to be paid from the town treasury, not exceeding two hundred dollars, to be ascertained by the Councilmen.

Intendant's powers.

Sec. 8. *And be it further enacted,* That if any vacancy shall occur by the death, resignation, or removal of the Intendant, or either of the Councilmen, it shall be the duty of the remaining members of the board to fill the same.

Vacancies.

Sec. 9. *And be it further enacted,* That the citizens of said town shall not be liable to work on any road out of the incorporate limits of said town, nor for more than ten days during any one year, within said town.

Exemption.

Sec. 10. *And be it further enacted,* That all laws and parts of laws, conflicting with this act, be, and the same are hereby repealed: *Provided, nevertheless,* the State retains the right to repeal or alter this law.

Repeal.

Approved, January 9, 1841.

[No. 4.]

AN ACT

Requiring the Judge of the County Court of Shelby and Butler counties to reside at or within three miles of the Court House.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, it shall be obligatory on the judge of the county court of Shelby county, to reside at or within three miles of the court house of said county. Residence.

Sec. 2. *And be it further enacted,* That all laws and parts of laws, contrary to the provisions of this act, be and the same are hereby repealed. But nothing herein contained shall be construed to prevent any citizen of the county from being eligible to the office of county court judge, who may remove within the limits prescribed within three months next succeeding his election. Proviso.

Sec. 3. *And be it further enacted,* That the judge of the county court of Butler county, hereafter appointed or elected, shall be subject to, and governed by, all the provisions of the above act. Butler county.

Approved, December 14, 1840.

[No. 5.]

AN ACT

To attach a part of the County of Butler to the County of Conecuh.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That all that part of the county of Butler, lying west of Duck and Long creeks, from where the county line comes down said creek to its junction, with Long creek, thence down Long creek to its junction with the Sepulgeeh creek, be, and the same is hereby taken from the county of Butler and attached to, and made a part of the county of Conecuh, any law to the contrary notwithstanding. Boundary.

Approved, January 2, 1841.

[No. 6.]

AN ACT

To attach a part of Morgan County to the County of Marshall.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That all that portion of the county of Morgan lying and being in the following bounds, viz: Beginning on the Tennessee river near the old Indian boundary line, at or near what is called Coffee's Bluff, and running a southern direction with said line, to the line of Blount county, thence with said line, to the south west corner of Marshall county, be and the same is hereby attached to the county of Marshall; and that the aforesaid old Indian line, which divided Morgan county from the Cherokee nation, shall be and the same is hereby made the dividing line between the counties of Morgan and Marshall. Boundary.

Approved, December 15, 1840.

[No. 7.]

AN ACT

To authorize the Tax Collectors of the Counties of Marshall, Chambers and Talladega, to receive jury certificates in payment of taxes due said counties.

Jury certificates receivable.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, the tax collector in and for the county of Marshall, shall be and is hereby authorized to receive for taxes due the said county, such juror's certificates as have or may be issued by the clerks of the circuit and county courts of said county, without regard to the time of their registration on the books of the county treasurer of said county, and that said certificates shall be received and accredited to the holders thereof, in lieu of money, for the amount of such tax as may be assessed and due the said county, any law to the contrary notwithstanding.

Sec. 2. *And be it further enacted,* That the provisions of this act shall extend to the counties of Chambers, Talladega, Cherokee and Benton.

Approved, December 15, 1840.

[No. 8.]

AN ACT

Authorizing the erection of two township School Houses, in the Town of Livingston, in Sumter County.

Power of Commissioners.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the school commissioners of township nineteen, and range two west, of the Demopolis land district, be and they are hereby authorized to appropriate two thousand dollars of the interest of the sixteenth section fund of that township, to the building of two school houses, a male and female academy, in the town of Livingston, Sumter county.

Trustees.

Sec. 2. *And be it further enacted,* That the inhabitants of township nineteen, range two west, in the county of Sumter, be and they are hereby authorized and empowered to elect any number of trustees, for the government of the two schools contemplated by the first section of this act, so as not to exceed ten in number for each school, which trustees shall be elected in the manner now prescribed by law, and have and possess the like powers and privileges.

Sec. 3. *And be it further enacted,* That all laws and parts of laws contrary to the provisions of this act, be and they are hereby repealed, as to township nineteen, range two west, in the county of Sumter.

Approved, December 2, 1840.

[No. 9.] AN ACT

To incorporate the Torrent Fire Engine Company, Number Five, of the City of Mobile.

Name and style.

Powers.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That George Bancroft, Charles Berry, John Franklin, G. Kimball, William Pitt, Isaac S. Davis, John Riley, and their associates, be and they are hereby incorporated by the name and style of the Torrent Fire Engine Company, number Five, of the city of Mobile, and by that name and style they are hereby authorized and empowered to sue and be sued, to have, hold, possess and enjoy, goods and chattels, lands and tenements of the value of twenty thousand dollars, to adopt a common seal, and the same to alter and renew at their pleasure, and further to make such by-laws, rules and regulations for the organization and government of said company, not inconsistent with the laws and constitution of the State of Alabama, as they may think proper.

Number in company.

Sec. 2. *And be it further enacted,* That the said company shall consist of not more than sixty five members, who shall be admitted under such rules and regulations as said company may adopt, whenever the number of members shall be less than sixty-five, or there shall occur any vacancy in the same.

Duty.

Sec. 3. *And be it further enacted,* That the same company shall be required to keep and maintain in good order for use, at least one Fire Engine, with the apparatus belonging to the same; and shall be subject to the same control and government that any other fire company in the city of Mobile is now subject to, according to any previous act of the General Assembly for the incorporation of the same.

Exemption.

Sec. 4. *And be it further enacted,* That the members composing the said company shall be exempted from militia duty, road tax, and the performance of jury duty, as grand and petit jurors in the circuit and county courts of Mobile county, so long as they continue to perform the duties of firemen under this act.

Duty of Solicitor.

Sec. 5. *And be it further enacted,* That whenever the said company shall habitually neglect the performance of their duty as firemen, or violate the provisions of this charter, that it shall be the duty of the solicitor of the tenth judicial circuit to cause a *scire facias* to be issued, calling upon the said company to show cause why their charter should not be declared forfeited, which writ shall be returnable to the circuit court of Mobile county; and if the said company shall be found guilty of such habitual neglect, the said court shall declare their charter to be forfeited, and the said company shall be, from thenceforth, dissolved.

Duty of Captain.

Sec. 6. *And be it further enacted,* That to secure to the members, of the company incorporated by this act, and the members of other fire companies in the city of Mobile, the privileges and exemptions contained in this act, the captain or foreman of each company shall furnish the sheriff of Mobile county, at least forty days previous to the commencement of each term of the circuit and county courts of said county, with a correct list of the members of his company, to which he shall attach his certificate, that each member performs the duty required of him by the by-laws of his respective company.

Approved, December 1, 1840.

[No. 10.]

AN ACT

To incorporate the Centenary Institute of the Alabama Annual Conference of the Methodist Episcopal Church, in the County of Dallas.

Names of Trustees.

Name and style.

Powers.

To hold property.

By-laws.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That Eugene V. Levert, Ebenezer Hearn, William Murrah, Asbury H. Shanks, Seymore B. Sawyer, Alfred Battle, Daniel H. Norwood, Daniel Pratt, Aaron Ready, Elisha F. King, Franklin C. Shaw, Benjamin J. Harrison, Noel Pitts, and Shadrach Mimms, and their associates and successors in office, are hereby constituted a body corporate and politic, in deed and in law, by the name and style of the Trustees of the Centenary Institute of the Alabama Annual Conference of the Methodist Episcopal Church, and by that name shall have full power and authority to have and use a common seal, and the same to break, alter, and renew at pleasure, to sue and be sued, plead and be impleaded, answer and be answered unto, in all kinds of actions, to receive donations, and make purchases of property, which shall inure to them, and their successors in office, for ever, and to sell, alien, and dispose of the same, and to hold real and personal estate, not exceeding in value sixty thousand dollars, over and above the value of its library and apparatus, and to pass all such by-laws, rules, and regulations, as the said corporation may deem expedient, the same not being repugnant to the constitution and laws of the United States, or of this State.

Vacancies.

Proviso.

Report,

Sec. 2. *And be it further enacted,* That eight trustees shall always constitute a quorum for the transaction of business, and a majority of said trustees shall have power to fill all vacancies which may occur from any cause: *Provided,* That no appointment made by said trustees, shall extend longer than the ensuing session of the Annual Conference; *And provided, further,* that the conference aforesaid shall at its annual session, have power to fill permanently all vacancies which may have occured, as aforesaid, and the trustees shall report to the conference, at each annual session, the state of the funds committed to their charge, with such recommendations, with regard to the improvements thereof, as to them seem advisable.

O ers.

Sec. 3. *And be it further enacted,* That said trustees shall have power to elect a President, Vice President, Secretary and Treasurer, to prescribe the duties of each, and to appoint teachers as to them may seem expedient, define the rates of tuition, and the same to increase or diminish, at pleasure, and to appoint the time of their own meetings.

Sec. 4. *And be it further enacted,* That it shall not be lawful for any individual, or co-partnership, to retail or vend ardent or intoxicating liquors within two miles of said institution; and any person so offending, by violating the provisions of this act, he, she or they so offending, shall forfeit and pay the sum of five hundred dollars, recoverable before any court, having competent jurisdiction thereof, one half to the prosecutor, and the other half to be paid into the county treasury. Penalty.

Approved, January 2, 1841.

[No. 11.] AN ACT

To authorize Henry Haynes to erect a Toll Bridge across Thompson's creek, in the County of Marshall.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That Henry Haynes is hereby authorized to erect and build a Toll Bridge across Thompson's creek, in the county of Marshall, at the most eligible place within one mile of its mouth. Toll bridge.

Sec. 2. *And be it further enacted,* That the property of the aforesaid bridge, when built, shall be, and the same is hereby vested in the said Henry Haynes, his heirs and assigns, for the term of five years, from the passage of this act, and he is hereby authorized to demand and receive, on the completion of said bridge, at a gate to be erected on said bridge, toll according to the following rates: for each and every road wagon, fifty cents; for each four wheel pleasure carriage, thirty-seven and a half cents; for each two wheel carriage, twenty-five cents; for each cart or other two wheel wagons, eighteen and three fourth cents; for man and horse twelve and a half cents; for each led or loose horse or mule, six and a quarter cents; for every head of cattle, three cents; for each head of sheep or goats, two cents; for each head of hogs, one cent: *Provided,* that the citizens of Marshall county, shall be exempt from paying toll at said gate: *And provided, also,* that that the said bridge shall be completed within twelve months from the passage of this act. Property vested. Rates.

Sec. 3. *And be it further enacted,* That it shall be the duty of the said Henry Haynes, his heirs, or assigns, to keep said bridge, when completed, in good order and repair, until the expiration of the aforesaid five years, or as long as he or they shall continue to receive toll, and he, the said Henry Haynes, his heirs and assigns, shall be held liable for all injuries, which may be sustained by any person or persons, passing or repassing said bridge: *Provided,* said injury results from the negligence or want of proper attention to the good order and repair of said bridge: *And provided, however,* that the said Henry Haynes shall in no way, obstruct the present ford on said creek. Liability.

Approved, January 1, 1841.

[No. 12.] AN ACT

To locate the Seat of Justice of Marion county, and for other purposes.

Election.

Proviso.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly, convened,* That it shall be the duty of the sheriff of Marion county to advertise and hold an election on the first Monday in June next, at the different election precincts in said county, for the purpose of selecting a site for the permanent location of the seat of justice of said county, and shall put in nomination the following places, to wit: the Military ford, on the Butterhatchee river, the Cotton Gin road ford, on Butterhatchee river, Allen Haleys, and the present location at Pikeville, and if neither one of said places, shall receive a majority of the whole number of votes given for said purpose, then it shall be the duty of the said sheriff to advertise and hold an election, at the places and in the manner above specified, on the first Monday of August thereafter, at which second election, he shall put in nomination the present location at Pikeville, and the place which shall have received the highest number of votes at said June election, and the place then receiving the greatest number of votes, shall be the permanent seat of justice of said county: *Provided, however,* that if the present location at Pikeville, should prove in the said election, to be holden on the first Monday's in June and August, to be the location preferred by a majority of the voters of said county, then, and in that event, no further action shall be had thereon, under the authority of this act.

Qualified voters.

Sec. 2. *And be it further enacted,* That all persons who are legally qualified to vote for a representative to the Legislature, at said time, in said county, shall be entitled to vote for said location. The sheriff shall prepare a separate box at each precinct in said county, to receive said votes, and he shall within ten days after said election, cause all the votes given for said location to be brought together at the present court house of said county, and he shall there count the same in the presence of the judge of the county court of said county, or in his absence, in the presence of three respectable freeholders thereof, and declare the result of said election.

Commissioners.

Powers.

Sec. 3. *And be it further enacted,* That James W. Logan, Kebble Terry, Thomas Armstrong, George Brown, and James B. Bankhead, be and they are hereby appointed commissioners, a majority of whom shall be competent to transact business, with power and authority to fill any vacancy that may occur in their body, by death, resignation, refusal to serve, or otherwise, to lay off a town at said site, as selected by the provisions of this act, and superintend the sale of lots therein, and execute titles thereto, to purchase any quantity of land therefor, not exceeding forty acres, and receive deeds therefor in the name of said county, and to cause to be erected such a court house, jail, and other public buildings, as they may think necessary to carry into effect the provisions of this act; and they shall have power to draw such sums of money out of the county treasury of said county, as shall be necessary to carry the same into effect, and it shall be the duty of the county treasurer to pay the same out of any money in the treasury, not otherwise appropriated; and said commissioners are empowered to name said town.

Sec. 4. *And be it further enacted,* That it shall be competent for said commissioners to locate said court house and other public buildings, at any point within three miles of the point above named, which shall be selected by the people of said county in the manner as aforesaid. Powers.

Sec. 5. *And be it further enacted,* That the judge of the county court of Marion county, and commissioners of roads and revenue, be and they are hereby authorized and empowered to assess an extra tax on the persons, and the property of the citizens of said county, of such amount as they, or a majority of them, may think necessary to carry out the spirit and intention of this act: *Provided,* that the amount assessed shall not exceed fifty per cent. on the amount now allowed to be collected by law, for other county purposes, and this power shall extend from year to year as may be found necessary for the completion of the said county buildidgs. Tax. Proviso.

Sec. 6. *And be it further enacted,* That the commissioners appointed by the third section of this act, shall have power to select special sites for the erection of the said county buildings, make contracts with builders, prescribe the size, and the materials of which said buildings are to be constructed; limited however, to considerations of economy, durability and convenience, and the ability of the tax payers of said county to make payment, without being oppressed, by the payment of unnecessary and burthensome taxes. Powers of Commissioners.

Sec. 7. *And be it further enacted,* That after said commissioners shall declare said court house to be complete, or in a sufficient state of advancement to accommodate the courts of said county, it shall be the duty of the judges of the circuit and county courts, of said county, to hold their respective courts at the point so selected for the county site, and the clerks of said courts shall be and they are hereby required to keep their offices at said site, or within two miles thereof, or vacate the same, and all writs and process of every nature, properly returnable to either of said courts, at the place now designated by law, shall thereafter be properly and lawfully returnable to the place selected for the county site. Courts to be held.

Approved, December 2, 1840.

[No. 13.] AN ACT

To authorize Henry Hunter, of Dallas County, to erect a Gate or Gates, upon that part of the public road which runs through his land, opposite the Town of Lexington, in said County, and for other purposes.

Gates.

Section 1. *Be it enatced by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That Henry Hunter, of Dallas county, be and he is hereby authorized and empowered to erect a gate or gates on that part of the public road which runs through his plantation, opposite the town of Lexington; crossing the Alabama river at Lexington, and leading from thence through said Hunter's plantation, to the road leading from Portland to Barboursville, in Wilcox county: *Provided,* that said Hunter shall so construct the gate or gates, on said road, as not to obstruct the free passage of persons travelling the same: *And provided, also,* that said gate or gates shall be free of toll, or other charge whatever: *Provided,* That said gate or gates shall be under the control and supervision of the judge and commissioners of roads and revenue for the county of Dallas, and they shall have power to order, and have said gate or gates, to be taken down, whenever in their opinion, the public good may require the same to be done.

Proviso.

Sec. 2. *And be it further enacted,* That before the said Henry Hunter shall erect said gate or gates, he shall first refund and pay into the treasury of Dallas county, the damages allowed him on account of said road, or such part thereof as he may be directed to pay by said court, of roads and revenue of said county.

Approved, January 2, 1841.

[No. 14.] AN ACT

To change the time of making settlement between the Tax Collector and Commissioners' Court of Jackson County.

Final settlement.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the tax collector of the county of Jackson, for the year one thousand eight hundred and forty, have, and he is hereby allowed until the first Monday of February, in the year eighteen hundred and forty-one, to make a final settlement with the commissioners' court of said county, for the taxes of the year eighteen hundred and forty, and that he then make said settlement instead of the time now prescribed by law: *Provided,* that the said tax collector shall at the time now prescribed by law, make his settlement as collector, and account according to law, for the amount collected in his hands, and that the object of this act in prolonging the settlement, is for the purpose of allowing the said tax collector time to settle with those who have not paid their taxes, without oppressing them unnecessarily.

Proviso.

Approved, December 1, 1840.

[No. 15.] AN ACT

To authorize the election of an Assessor and Tax Collector, for the County of De Kalb.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That it shall be the duty of the sheriff of the county of De Kalb, to open, and hold an election at the different precincts in said county, on the first Friday in March next, and yearly, thereafter, for the purpose of electing an assessor and tax collector for said county, and the said sheriff shall give a certificate to the person receiving the highest number of votes. Election.

Sec. 2. *And be it further enacted,* That the person receiving the highest number of votes, before he enters upon the discharge of his duty, shall take and subscribe an oath before some person having competent jurisdiction, that he will faithfully, and to the best of his ability, discharge the duties of assessor and tax collector for said county, and shall give bond with sufficient security, to be approved of by the judge of the county court of said county, in such sum as said judge may deem sufficient. Oath. Bond.

Sec. 3. *And be it further enacted,* That said assessor and tax collector, when elected, and qualified, shall be governed by the same rules and regulations, and be subject to the same fines and forfeitures, as the sheriff is now liable to by law, in like cases. Rules, &c.

Sec. 4. *And be it further enacted,* That all laws, or parts of laws, contravening the provisions of this act, as far as relates to the county of De Kalb, be and the same are hereby repealed. Repeal.

Approved, December 22, 1840.

[No. 16.] AN ACT

To incorporate the Irwinton Fire Hook and Ladder Company.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That for the protection against fire of the town of Irwinton, Barbour county, Alexander McDonald, of said town, and his associates, not exceeding sixty in number, and their successors, be and they are hereby declared a body corporate, under the name and style of the Irwinton Fire Hook and Ladder Company, with the rights, privileges, powers, and duties necessary and proper to order and conduct said company, and to effecting the object of their organization; and all members of said company, while the same is kept furnished with all necessary and proper instruments, and regularly discharge their proper drill and other duties, shall be exempt from militia and patrol duties. Name and style. Powers.

Sec. 2. *And be it further enacted,* That nothing herein contained, shall prevent a future Legislature from repealing the above act, or any part thereof. Proviso.

Approved, January 6, 1841.

[No. 17.] AN ACT

To amend an act to incorporate the Firemen's Insurance Company of Mobile.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That any stockholder owning the requisite number of shares of the stock of the Firemen's Insurance Company of Mobile, shall be eligible for a director of said company, and that any stockholder failing to pay any and all instalments called in upon the capital stock by the board of directors of said institution, shall be debarred, during the continuance of said non-payment, from receiving any dividend, and from transferring said stock.

Eligibility.

Sec. 2. *And be it further enacted,* That each and every stockholder shall be individually and personally liable at law, as well as in equity (in addition to the securities given) for the amount of instalments due upon each share of the stock of said company, until the capital stock is paid in full, and the board of directors of said company may at its option, retain the dividends and prohibit the transfer of the stock, belonging to any stockholder who may be indebted to said company for loans or otherwise.

Liability.

Sec. 3. *And be it further enacted,* That such parts of the act, to which this is an amendment, as are inconsistent with the provisions of this act, be and the same are hereby repealed: *Provided,* that this act be of no force and effect, until the stockholders shall give their consent to the alteration proposed in their charter, by this act.

Repeal.

Approved, January 2, 1841.

[No. 18.] AN ACT

To abolish and establish certain election precincts in De Kalb County, and for other purposes.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That an election precinct heretofore established at the Sulphur Springs, De Kalb county, be and the same is hereby abolished, and one in lieu thereof established at the house of A. De Armen, in said county.

De Kalb.

Sec. 2. *And be it further enacted,* That an election precinct be established at Partin Burgess' in Franklin county.

Franklin.

Sec. 3. *And be it further enacted,* That the election precinct at the house of J. R. Sparks, (formerly Stout's) in the county of Blount, be and the same is hereby abolished, and that in lieu thereof, an election precinct be and hereby is established at the house of John R. Cook, in said county.

Blount.

Sec. 4. *And be it further enacted,* That an election precinct be established at the house of Dennis Nicholas, on the Pascagola stage road, in the county of Mobile.

Mobile.

Approved, January 9, 1841.

[No. 19.] AN ACT

To authorize the Commissioners of township sixteen, range seventeen, of Montgomery County, to erect a suitable building for an Academy.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That it shall be lawful for the commissioners of township sixteen, range seventeen, of Montgomery county, by and with the consent of a majority of the resident citizens of said township, to purchase a lot of ground, and erect thereon a suitable building, out of the funds of said township, for the accommodation of the scholars of said township: *Provided,* the whole cost shall not exceed three hundred dollars, any law to the contrary notwithstanding.

Academy.

Approved, January 1, 1841.

[No. 20.] AN ACT

To change the name of Ivey Boiett, and for other purposes.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, the name of Ivey Boiett, of the county of Montgomery, be and the same is hereby changed to that of Ivey Boiett Murray.

Name changed.

Sec. 2. *And be it further enacted,* That the said Ivey Boiett, be and he is hereby made the legal heir of James Murray, of the county of Montgomery, and be entitled to take and hold any property by inheritance, or otherwise, that may descend to him as such.

Legal heir,

Sec. 3. *And be it further enacted,* That hereafter, the name of Sarah Walsh shall be changed, and known by the name of Sarah Barnes, of the county of Mobile.

Name changed.

Approved, January 2, 1841.

[No. 21.] AN ACT

To compensate Little & Hopkins, for passage and stores of sixty-four Volunteer Soldiers of Captain Martin and Taylor's Company, from Mobile to Demopolis and Jamestown, on board the steamer Wanderer.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the Comptroller of Public Accounts be, and he is hereby authorized to draw his warrant upon the Treasurer, for any money in the treasury not otherwise appropriated, to Little & Hopkins, for the sum of five hundred and eleven dollars and eighty cents, for passage and stores of sixty-four volunteer soldiers of Captain Martin and Taylor's companies from Mobile to Demopolis and Jamestown, on board the steam boat Wanderer.

Little & Hopkins.

Approved, January 2, 1841.

[No. 22.] AN ACT

To alter the time of holding the the Spring Term of the Circuit Court, in certain counties therein named.

Tallapoosa. Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That hereafter, the spring term of the circuit court for Tallapoosa county, shall commence at the time now fixed by law, and may continue to sit for two weeks.

Chambers. Russell. Macon. Sec. 2. *And be it further enacted,* That the spring term, for the county of Chambers, shall be commenced on the third Monday after the fourth Monday in March, and sit one week; for the county of Russell, on the fourth Monday after the fourth Monday in March, and sit one week: for the county of Macon, on the fifth Monday after the fourth Monday in March, and sit one week.

Repeal. Sec. 3. *And be it further enacted,* That all laws, and parts of laws, contravening the provisions of this act, be and the same are hereby repealed.

Process Sec. 4. *And be it further enacted,* That all writs and other process, which now are, or may hereafter be issued, returnable to the approaching terms of said court, as heretofore fixed by law, shall be returnable to said courts as herein provided.

Approved, January 9, 1841.

[No. 23.] AN ACT

To compensate Burke and Lowery of Talladega County.

Burke & Lowery. Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the sum of one hundred and thirty-five dollars be and the same is hereby appropriated for the payment of William N. Burke John Lowrey, of Talladega, for provisions furnished by them to a volunteer company in the town of Talladega, on the twelfth day of March, eighteen hundred and thirty-six, and that the same be allowed to said Burke and Lowrey, out of any money in the treasury not otherwise appropriated.

Approved, January 1, 1841.

[No. 24.] AN ACT

To compensate Jefferson Buford for sending express with despatches in relation to State service to General Wellborn.

Jeff. Buford. Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the Comptroller of Public Accounts be and he is hereby authorized to draw his warrant upon the Treasurer for any money in the Treasury, not otherwise appropriated, to Jefferson Buford, the sum of twenty dollars for sending an express with despatches in relation to State service, to General Wellborn.

Approved, January 2, 1841.

[No. 25.]

AN ACT

To incorporate Sylvania Male and Female Academy, in the County of Limestone.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That there shall be established in the county of Limestone, an Academy to be called and known as the Sylvania Male and Female Academy, and that Simpson A. Flanagan, Clement Hancock, William C. Watson, John Watson and William Long, and their successors in office, be and they are hereby declared to be a body politic and corporate, by the name and style of the Trustees of the Sylvania Male and Female Academy, and as such shall be capable and liable in law to sue and be sued, to plead and be impleaded, and shall be authorized to make such laws and regulations as shall be necessary for the government of said academy: *Provided,* that such by-laws and regulations are not repugnant to the constitution and laws of this State, and for that purpose may have and use a common seal, and appoint such officers as they may think proper, and remove the same from office for improper conduct or neglect of duty.

Name and style.

Powers.

Proviso.

Sec. 2. *And be it further enacted,* That the trustees aforesaid shall be capable of accepting and being invested with all manner of property, both real and personal, all donations, gifts and immunities whatsoever, which may belong and appertain to said institution, or which may hereafter be conveyed or transferred to them or their successors in office, to have and to hold the same for the proper use and benefit of said academy, not exceeding twenty thousand dollars, and for twenty years.

To hold property.

Sec. 3. *And be it further enacted,* That whenever any vacancy may occur, by death, resignation, or otherwise, of any of the trustees of said academy, the remaining trustees shall fill such vacancy in such manner as shall be pointed out by the by-laws and regulations of said incorporation.

Vacancies.

Sec. 4. *And be it further enacted,* That all property owned by the trustees, for the benefit of said academy, shall be free from taxation.

Approved, January 5, 1841.

[No. 26.]

AN ACT

For the relief of Thomas Casey, and others.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That hereafter, in all cases, where it may be necessary for Thomas Casey, Paul H. Early, Thomas P. Harvie, and William Hunter, or either of them, to take, or subscribe the oath or oaths, prescribed by law against duelling, that the same be limited, in point of time, to the first day of August, in the year of our Lord eighteen hundred and forty.

Released from duelling oath.

Approved, December 4, 1840.

[No. 27.] AN ACT

To incorporate the Tipton Male and Female Academy.

Name and style.

Powers.

Proviso.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That an Academy be and the same is hereby incorporated in the county of Macon, to be styled the Tipton Male and Female Academy, and that Barna Ivey, Benjamin F. Boram, Jesse T. Boring, Elihu Talbot and Elijah E. Crocker, and their successors in office, be and they are hereby declared to be a body politic and corporate, by the name and style of the Tipton Male and Female Academy; and as such shall be capable and liable in law or in equity, to sue and be sued, plead and be impleaded, and shall be authorized to make such by-laws and regulations as shall be necessary for the government of said academy: *Provided,* such by-laws are not repugnant to the laws and constitution of this State, and of the United States, and for that purpose, may have and use a common seal, and appoint such officers as they may think proper, and remove the same for improper conduct or neglect of duty.

General powers.

Sec. 2. *And be it further enacted,* That said trustees or body corporate, shall be privileged to accept of and be invested with all manner of property, either real or personal, or mixed; also, all donations, gifts, grants, privileges and immunities, whatsoever, which may be hereafter made, or granted to said institution, or which may be hereafter conveyed or transferred to them or their successors in office, to have and to hold the same for the use, benefit and behalf of said academy: *Provided,* the same shall not exceed twenty thousand dollars.

Vacancies.

Sec. 3. *And be it further enacted,* That when a vacancy may occur by death, resignation, or otherwise, of any of the trustees of said academy, the survivors, or the residue of said trustees, shall fill the same in such manner as shall be pointed out, by the by-laws and regulations of said incorporation.

Exempt from taxes.

Sec. 4. *And be it further enacted,* That all property owned by said trustees, in their aforesaid corporate capacity, shall be vested with such body corporate in perpetuity, for the use of said academy, and shall be, and is hereby declared free from taxation.

Approved, January 1, 1841.

[No. 28.] AN ACT

To repeal the fifth section of An act, to Incorporate the Town of Fredonia, in Chambers County, approved, February 4th, 1840.

Repeal.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, the said fifth section, of the above recited act, be, and the same is hereby repealed.

Approved, December 18, 1841.

[No. 29.]

AN ACT

To incorporate the Town of Jasper, in the County of Walker.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the town of Jasper, in the county of Walker, be, and the same is hereby incorporated, and all the territory lying within one fourth mile of the court house, in every direction, is hereby declared to be within the limits of said incorporation. Limits.

Sec. 2. *And be it further enacted,* That on the first Monday in March, eighteen hundred and forty-one, and on the first Monday in January, in each and every year thereafter, at some public place in said town, an election shall be held for the purpose of electing one Intendant and four Councillors, who shall be resident freeholders in said town, and shall hold their offices until their successors are qualified; the first election shall be held by Moses Camak, Thomas A. Heard, Jonathan Evans, Thomas Camak, and G. W. McDonald, who shall be qualified by some acting justice of the peace, to conduct the said election fairly and impartially, and to give certificates of election to those having received the highest number of votes, and every succeeding election shall be held by the acting Councillors, or a majority of them. Election.

Sec. 3. *And be it further enacted,* That it shall be the duty of the Intendant, when present, to preside at all meetings of the board, to preserve order, and to enforce the laws of the corporation, but a majority of the board, shall be competent to transact business, and the said board is hereby declared to be a body politic and corporate, by the name of the "Intendant and Council of Jasper," and by that name, shall have and enjoy all the rights, powers and privileges, and be subject to all the liabilities that are incident to bodies corporate. Intendant's powers. Name and style.

Sec. 4. *And be it further enacted,* That all free white male citizens over twenty-one years of age, who shall have been residents of said town for thirty days, immediately preceding any election for Intendant and Councillors, and who shall have paid all fines, which may have been assessed against them, by said corporation, shall be entitled to vote at said election. Voters.

Sec. 5. *And be it further enacted,* That the said board shall have full power to make all by-laws and ordinances of whatever kind, and upon whatever subject to them may seem right and proper, for the good government of said town, to lay and collect taxes, to defray the expenses of the corporation, not exceeding the county tax on the same kind of property taxed by the county; to affix such fines not exceeding ten dollars, and imprisonment in the county jail not exceeding twenty-four hours, for any one transgression, as may by them be deemed necessary, to enforce due obedience of the laws and ordinances of said corporation, not repugnant to the laws of this State. General powers.

Intendant. Sec. 6. *And be it further enacted,* That the Intendant of said corporation shall be *ex officio* justice of the peace for all purposes connected with said corporation and the enforcement of its laws, may exercise all the powers, and shall be subject to the same duties and liabilities of justice of the peace, of the county of Walker, and shall be entitled to receive for all services touching the violation of any of the laws and ordinances of said corporation and all other cases, the same fees now allowed by law to justices of the peace.

Vacancies. Sec. 7. *And be it further enacted,* That the said board shall have power to supply all vacancies that may happen in their body, between the regular elections, to appoint a Treasurer, a Constable, and such other officers as they may require, and to affix such fees and regulations to such offices as they may deem necessary and proper.

Powers. Sec. 8. *And be it further enacted,* That the Intendant or any Councillor, shall have full power to punish all violations of the laws and ordinances of said corporation, and all offenders shall be proceeded against in such manner as may be prescribed in the ordinances, by executions against persons and property.

Election of officers. Sec. 9. *And be it further enacted,* That if, from any cause, an election should not be held for Intendant, at the time herein prescribed, that any two of the Councillors or the Intendant may advertise some other convenient day, when the election shall be held, giving ten days notice of the same election.

Oath. Sec. 10. *And be it further enacted,* That the Intendant and each of the Councillors before entering upon the discharge of their duties, shall take and subscribe an oath, to faithfully discharge the duties assigned them, without favor or partiality, before some judge or justice of the peace.

Approved, December 31, 1840.

[No. 30.]

AN ACT

To Incorporate Central Seminary, in the County of Autauga.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, Central Seminary, in the county of Autauga, shall be known and called by that name, and that John Steele, E. H. Cook, P. S. Graves, William Burt, Samuel S. Simmons, B. S. Bibb, James H. Mallard, Samuel C. Oliver, Incorporation Jas. D. Lee, Blake Little, John Wood, Dent Lamar, Lewis Howser, Mark Howard, Isaac Dubose, and James H. Smith, and their successors in office, be, and they are hereby constituted and declared to be a body politic, in trust, for the Methodist Protestant Church, of the Alabama District, to hold their office for the term of five years, by the name and style of Central Seminary; and as such shall be capable and liable in law to sue and be sued, plead and be impleaded, and shall be authorized to make such by-laws and regulations as shall be necessary for the government of said institution:

Provided, such by-laws and regulations are not repugnant to the constitution and laws of this State, nor conflict with the rights already guaranteed, to J. Harris and others, as a board of literature for the term of five years, and for that purpose may have and use a common seal, appoint such officers as they may think proper, and remove the same from office for improper conduct. Proviso.

Sec. 2. *And be it further enacted,* That the trustees shall be capable of accepting and being invested with all manner of property, real and personal, all donations, gifts, grants, privileges and immunities whatsoever, which may belong to said institution, or which may hereafter be conveyed, or transferred to them or their successors in office, to have and to hold the same, for the proper benefit and use of said Central Seminary. To hold property.

Sec. 3. *And be it further enacted,* That the Methodist Protestant Church, of the District of Alabama, be, and they are hereby authorized and empowered to appoint the successors of the aforesaid board of trustees, and fill all vacancies that may occur in any wise; and the same powers and privileges hereby conveyed to the aforesaid board of trustees, shall descend to, and may be exercised by the successors that may be appointed by said Methodist Protestant Church, of Alabama District. Powers.

Sec. 4. *And be it further enacted,* That seven members of the board of trustees shall constitute a sufficient number to transact business in the absence of other members. Quorum.

Approved, January 9, 1840.

[No. 31.]

AN ACT

For the benefit of "the Alabama Fencibles."

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, all the rights, privileges, and immunities, which were heretofore conferred upon a volunteer company, in the town of Huntsville, known and called "the Huntsville Guards," be, and the same is hereby granted to and conferred upon the "Alabama Fencibles." Privileges

Approved, December 18, 1840.

[No. 32.]

AN ACT

To amend An act to Incorporate the Town of Columbiana, in the County of Shelby, Approved, 5th December, 1837.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the first section of the above recited act, be so changed as to read as follows: That for one-half of a mile each way from the public square in said town, be, and the same is hereby incorporated under the corporate name of the town of Columbiana. Boundary.

Approved, December 14, 1840.

[No. 33.] AN ACT

To Incorporate the town of Eutaw, in Greene county.

Limits.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the following parcels of land, situated in Greene county, and known and described as the west half of section number thirty-four, the east half of section number thirty-three, the south half of section number twenty-eight, the north-west quarter of section number twenty-eight, and the east half of section number twenty-nine, all in township number twenty-two, of range number two, east, be, and the same are hereby declared to be included within, and to constitute the corporate limits of the town of Eutaw; and that the free white inhabitants, dwelling within the said corporate limits, and their successors forever, shall be, and they are hereby constituted and made a body politic and corporate, by the name of the town of Eutaw, and by that name may have and use a common seal, which they may alter at their pleasure, and may sue and be sued, implead and be impleaded in any court; and may receive, purchase and hold property, real or personal, not exceeding fifty thousand dollars in value, and may lease, sell, use or dispose of any such property, in any manner they may think proper, for the use and benefit of said town.

Corporate name, &c.

Powers.

Sec. 2. *And be it further enacted,* That the corporate powers of said town, shall be vested in, and exercised by and through an intendant and four councillors, who, when qualified and elected, as hereinafter to be provided, shall constitute a board, to be called the Intendant and Council of the town of Eutaw.

Qualification of voters.

Sec. 3. *And be it further enacted,* That every free white male citizen of said town, who by the laws now in force, is qualified to vote for members of the State Legislature, and who shall have paid all taxes and fines assessed against, or imposed upon him by the proper authorities of said town, and who shall, moreover, have had his domicil in said town for three months, next preceding any election for intendant and councillors, and no other than such persons, shall be qualified to vote for intendant and councillors of said town.

Eligibility.

Sec. 4. *And be it further enacted,* That no person shall be eligible to or qualified to fill the office of intendant or councillor of said town, unless he was at the time of his election, a citizen of said town.

Survey to be made.

Sec. 5. *And be it further enacted,* That it shall be the duty of the intendant and council of the town of Eutaw, within six months after the passage of this act, to cause the territory lying within the corporate limits of said town, to be accurately surveyed, and laid off into lots and streets, and to number all such lots, and to give names to all such streets; and to cause an accurate plan of said town to be made out, with the number of the lots, and the name of the streets, marked thereon; which plan shall be certified to by the surveyor to be correct, and shall be recorded in the clerk's office of the county court of Greene county, in like manner as deeds are by law directed to be recorded, and in the same book in which deeds are recorded; and within one month after such plan is made and recorded, the said Intendant and Council, shall by ordinance, lay off and divide the town into four wards, the boundaries of each of which, shall be distinctly prescribed, and shall not be changed except by a subsequent ordinance of the said intendant and council.

Elections.

Sec. 6. *And be it further enacted*, That an election of intendant and councillors of said town, shall be holden on the first Monday of January, A. D. one thousand, eight hundred and forty-one, in the manner prescribed by an act entitled "an act to incorporate the town of Eutaw," approved January thirty-first, one thousand, eight hundred and forty; and all subsequent elections of said intendant and councillors of said town, shall be holden on the first Monday in January, in each and every year, at the court-house of Greene county, in said town, or such other public place in said town, as the intendant and council of said town, may, by ordinance, direct and appoint; and all such elections shall be holden by and before the acting intendant, and two councillors, or before the councillors of said town, and shall be by ballot, and conducted as elections for members of the State Legislature are conducted; and at such elections, one councillor shall be elected for each of the four wards of said town, each voter being allowed to vote for four persons as councillors; *Provided*, that he shall not be allowed to vote for two or more persons as councillors living in the same ward; and that he shall designate on his ticket or ballot, the name of the person voted for, and the number of the ward for which he is voted for as councillor; and that no person shall be voted for as councillor in any ward, unless he is at the time, a resident citizen of that ward; and all tickets not given in conformity with this proviso, shall be rejected by the officers holding the election.

How conducted.

Sec. 7. *And be it further enacted*, That at the close of any such election, the officers conducting the same shall cause the person receiving the highest number of lawful votes as Intendant, to be declared and proclaimed elected Intendant for said town, and each person who shall have received the highest number of lawful votes as Councillor, for any ward, to be declared and proclaimed elected Councillor of said town, for such ward; and in case of a tie, the officers conducting such election, shall give the casting vote, and they shall give a certificate of his election to each person elected, and shall also certify the result of such election to the Intendant and Council of the town of Eutaw; and also, to the clerk of the county court of Greene county.

Tickets to be kept.

Sec. 8. *And be it further enacted*, That it shall be the duty of the officers holding such election, to seal up the tickets or ballots, and the polls or lists of voters, taken at such election, and carefully keep the same for ten days, next succeeding any such election; and if within the said ten days, any person, being a qualified voter of said town, shall notify either of said officers, that such

Contested elections.

election will be contested, it shall be the duty of said officers forthwith, to deposit the said tickets or ballots, and polls or lists of voters, sealed up as aforesaid, in the office of the clerk of the county court of Greene county, who shall endorse thereon the time when, and the person by whom the same was deposited in his office, and shall keep the same sealed up, until opened by order of the judge of the county court of Greene county.

Who may contest, and how.

Sec. 9. *And be it further enacted*, That any person being a qualified voter of said town, may contest the election of any person as Intendant or Councillor of said town, in the following manner, and not otherwise: that is to say, the person desiring to contest such election, may within ten days after such election, give notice in writing to the officers who conducted such election, and to the person or persons whose election he intends to contest, of his intention to contest the same; and shall, also, within the said ten days, file a petition in the office of the clerk of the county court of Greene county, addressed to the judge of said county, setting forth his intention to contest such election, and the grounds on which he contests the same; and it shall, thereupon, be the duty of the said judge, by order in writing upon said petition, to appoint some day, not less than five nor more than thirty days from the filing of said petition, to hear and determine the same; and each party may proceed and take the affidavits of any witnesses, to be read in evidence on the trial of such petition, upon giving the opposite party one day's notice of the time and place of taking the same, which affidavit may be taken by and before any justice of the peace, or acting Intendant or Councillor of said town, without any special commission to be issued for that purpose, and being sworn to and subscribed by the witness, and testified by the person taking the same, shall be received and read in evidence on the trial of such petition: and at such trial the judge may, also, receive the oral testimony of any competent witness, who may appear before him; and the judge of the county of Greene county, is hereby authorized to hear and determine any such contest, and to decide who is legally elected Intendant or Councillor of the town of Eutaw, or to declare said election void, and order a new election: and the decision of the said judge, shall be filed in writing, upon or with the said petition, and shall be deemed a record of said court, and shall be certified by the clerk of said court, to the Intendant and Council of the town of Eutaw; and such decision shall be final, and no appeal shall be taken therefrom.

Duty of sheriff.

Sec. 10. *And be it further enacted*, That it shall be the duty of the sheriff of Greene county, to serve and return all such notices as are hereby required to be given; and he shall receive the same fees, as for serving notices in suits at law, to be paid by the person at whose instance the service was performed: *Provided, however*, that such notices may be served and proved by any credible person: *And provided, also*, that if any person on whom

Proviso.

such notice should be served, shall be absent from said town at the time, the parties may proceed *exparte* in such petition, and to take testimony *exparte*, and the same shall be as good and valid as if such notice had been actually given.

Oath.

Sec. 11. *And be it further enacted,* That every person elected as Intendant or Councillor of said town, shall, before he enters on the discharge of the duties of his office, take and subscribe an oath, that he will faithfully discharge the duties of his office, without fear, favor or affection; which oath may be administered and certified by the acting Intendant of said town, or any justice of the peace for Greene county; and the Intendant and Councillors shall hold their offices for one year from the time of their election, and until their successors in office shall have been duly elected and qualified, as herein provided; and may fill any vacancy arising in their own body.

Powers of Intendant and Council.

Sec. 12. *And be it further enacted,* That the Intendant and Council of the town of Eutaw, shall have power, and are hereby authorized to make all such ordinances and by-laws, not repugnant to the constitution and laws of this State, as they may think necessary and proper, for the good government of said town; to lay and collect taxes for the use of the corporation, not exceeding the county tax, on the same kind of property taxed by the county; the mode of proceeding against persons not complying with, or violating the ordinances or by-laws of said town, and to punish persons failing to comply with, or guilty of violating the by-laws or ordinances of said town, by fine, not exceeding twenty dollars, for any one offence, or in case of disorderly conduct, contempt of the officers of said town, or violation of the penal ordinances or by-laws of said town, by imprisonment in the jail of Greene county, not exceeding twenty-four hours for any one offence; and it is hereby made the duty of the sheriff and jailor of said county to receive and keep, in close custody, any body committed to his custody by the proper officer of said town, in like manner and under like penalties, as if the commitment were made by a justice of the peace for Greene county: *Provided,* that in case of any person being committed for a breach of any by-law or ordinance of said town, the said town shall pay the usual fees and charges to the sheriff and jailor, if the same are not paid by the prisoner.

Proviso.

Powers, &c.

Sec. 13. *And be it further enacted,* That the Intendant and each Councillor of said town, shall be a conservator of the peace within the corporate limits of said town; and for all felonies, breaches of the peace, or any penal law of the State; or other crimes or misdemeanors committed within the corporate limits of said town, may proceed against the offender with the same power and jurisdiction, and in like manner, as any justice of the peace in Greene county, might lawfully do.

Sec. 14. *And be it further enacted,* That the Intendant and Council of said town, shall elect and appoint a clerk, a treasurer, a captain of patrol, an overseer of streets, a marshal, and such

Officers. other officers of said town, as they may deem necessary and proper; and may, by ordinance, prescribe the qualifications, powers and duties of such officers, and provide for the payment of such officers, by such salaries or fees of office as they may deem reasonable and proper; and the marshal of said town, upon giving bond and sufficient security, to be approved of by the Intendant of said town, payable and conditioned as constable's bonds are required to be, shall be vested with the same powers, and perform all the duties which any constable of Greene county might lawfully do; for official neglect or default, may be proceeded against as such constable may be.

Intendant. Sec. 15. *And be it further enacted,* That the Intendant of said town shall be *exofficio* a justice of the peace for Greene county, and may exercise and have all the powers and jurisdiction, both in civil and criminal cases, which any other justice of the peace for said county, may now have and exercise.

Duties, &c. Sec. 16. *And be it further enacted,* That the Intendant and Council of said town, may open any new street, or widen or change any existing street, by and with the consent of the owners of the land, over or upon which the same would pass, or by paying to such owners, such compensation therefor, as they may agree upon; but if the owners of the land, over or upon which such street would pass, shall not consent to the same, the said Intendant and Council, may petition the court of commissioners of roads and revenue of Greene county, to make an order, authorizing them to open such new street, or widen and change such existing street, upon giving thirty days previous notice thereof, to the persons so objecting, by personal service, on such as are citizens of the town, or by putting up such notice at the court house door of Greene county, if the persons so objecting are not citizens of said town; and any person, over or upon whose land such street would pass, may appear in said court, and oppose such order, and if the court shall be of opinion that such order ought to be made, any such person may apply for a writ of *ad quod damnum,* and the court shall thereupon cause a jury to be empannelled, to inquire of and assess the damages which such person would sustain thereby; and such damages, so assessed, shall be paid or tendered by the proper officers of said town, to the person or persons in whose favor the same were assessed, before the court shall make such order.

Intendant to preside. Sec. 17. *And be it further enacted,* That the Intendant, when present, shall preside at all meetings of the Intendant and Council of said town; and in his absence, the oldest Councillor present, shall preside at such meetings; and at least three members must be present at such meeting to constitute a quorum to do business; and the said intendant and Council shall have regular meetings, at least once every month, at such time and place as they may by ordinance appoint, and may have a special meeting whenever they may think proper; and they shall keep a journal of all their proceedings: and shall, moreover, cause all by-laws and ordinances, which they may make, to be recorded in a separate and well bound book, and no by-law or ordinance, shall be valid or take effect, until it shall have been so recorded; and signed by at least three of the members of the Board of Intendant and Council of Eutaw; and such record book shall be kept by the clerk of said town, and be at all times open to the inspection of any citizen of said town.

Sec. 18. *And be it further enacted*, That the Intendant and Council of said town, are authorized and required to cause the roads, streets and alleys in said town to be kept in good order, and free from obstructions; and all such inhabitants of said town, as are liable to work on public roads, by the laws now in force, shall hereafter be liable to work on the roads, streets and alleys of said town, not more than ten days in any one year; and they shall be hereafter, free and exempt from working on, or opening any road not within the corporate limits of said town, *Provided, nevertheless*, that the said Intendant and Council, may exempt any such inhabitant from doing such work for one year, upon his paying into the treasury of said town, such sum of money, not exceeding ten dollars, as the said Intendant and Council, may by ordinance, prescribe, to be used in keeping the said streets, roads and alleys in good order. Streets to be kept open. Proviso.

Sec. 19. *And be it further enacted*, That the Intendant and Council of said town, may establish a sufficient patrol in and for said town; and all such inhabitants of said town, as are now by law liable to do patrol duty, shall hereafter be liable to do patrol duty in said town; and shall, also hereafter, be free and exempt from doing any other patrol duty, than such as they may be required to do by the proper officers of said town. Patrols.

Sec. 20. *And be it further enacted*, That all laws and parts of laws, inconsistent with or contrary to the provisions of this act, be and the same are hereby repealed. Repeals.

Approved, January 2, 1841.

[No. 34.] AN ACT

For the payment of Grand and Petit Jurors of Dale and Wilcox counties.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That it shall be the duty of the judges of the county courts of the counties of Dale and Wilcox, together with the commissioners of roads and revenue, at their first court in each and every year, to set apart a sufficient amount of money, out of the county taxes, to pay the grand and petit jurors of said counties. Duty of court.

Sec. 2. *And be it further enacted*, That it shall be the duty of the county treasurers of said counties, after the first day of January, 1842, to attend at the court house, during the session of the circuit and county courts of said counties, and when the jurors are discharged, by producing the certificate of the clerk of the Of Treasurer.

circuit or county court to the treasurers of said counties, it shall be their duty to pay the said jurors the full amount of his certificate in money; and on failure of said treasurers to do so, they shall be liable to be indicted for mal-practice in office, and on conviction, shall be fined in a sum, not less than twenty, and not more than fifty dollars; and also, they and their securities, shall be liable to be sued before any justice of the peace, having jurisdiction of the same, for the amount of the certificate presented and refused, or neglected to be paid off, according to the provisions of this act.

Repeal. Sec. 3. *And be it further enacted*, That all laws and parts of laws contravening the provisions of this act, be and the same are hereby repealed.

Approved, January 1, 1841.

[No. 35.] AN ACT

To change the times of holding the Circuit Courts of the second judicial circuit.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That from and after the passage of this act, the courts of the second judicial circuit shall be held at the times following, to wit: Butler. In the county of Butler, on the first Mondays of March and September in each and every year, and may continue in session six judicial days: Lowndes. In the county of Lowndes, on the first Mondays after the fourth Mondays in March and September, and may continue in session twelve judicial days: Autauga. In the county of Autauga, on the third Mondays after the fourth Mondays in March and September, and may continue in session twelve judicial days: Dallas. In the county of Dallas, on the fifth Mondays after the fourth Mondays in March and September, and may continue in session eighteen judicial days: Wilcox. and in the county of Wilcox, on the eighth Mondays after the fourth Mondays in March and September, and may continue in session until the business is disposed of.

Process. Sec. 2. *And be it further enacted*, That all writs, subpœnas, and other process, which now are or may hereafter be issued, returnable to said courts, as heretofore held, shall be and are hereby made returnable to said courts, as herein established.

Approved, December 21, 1840.

[No. 36.] AN ACT

For the relief of Andrew J. Dozier, Cicero D. Hudson and James R. Powell.

Relief, &c. Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That hereafter, whenever it shall become necessary for Andrew J. Dozier, Cicero D. Hudson and James R. Powell, to take or subscribe the oath or oaths against duelling, the same shall be confined in point of time, to the first day of January, eighteen hundred and forty.

Approved, January 2, 1841.

[No. 37.]

AN ACT

To abolish and establish certain Election Precincts therein named.

Election Precincts abolished and established.

In Jefferson.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the election precinct heretofore established at Rock Creek, in the county of Jefferson, be, and the same is hereby abolished, and that in lieu thereof, an election precinct be, and is hereby established, at Mud Creek Meeting House; and one at the house of Joseph Vines, jun. in said county.

Walker.

Sec. 2. *And be it further enacted,* That the election precinct heretofore established at the house of Eldridge Mallard, in the county of Walker, be abolished, and in lieu thereof, one be established at Byrd McDonald, in said county.

Marengo.

Sec. 3. *And be it further enacted,* That an election precinct be, and the same is hereby established at Spring Hill, Marengo county, and known as the Spring Hill precinct.

Lawrence. Tallapoosa. Coosa. Conecuh. Pike.

Sec. 4. *And be it further enacted,* That election precincts be established at the following places, viz: one at Pin Hook, in Lawrence county; one at the house of Augustus Bowels, in the county of Tallapoosa; Cyprian Cross, in the Weoqufska settlement in the county of Coosa; one at the village of Evergreen, in the county of Conecuh; and one at the house of Caleb Starling, in the county of Pike; and that the one heretofore established at the house of Henry Youngblood, in said county, be and the same is hereby abolished.

Limestone.

Sec. 5. *And be it further enacted,* That the election precinct heretofore established at High's Store, and at Hezekiah B. Cartwright's Store, in the county of Limestone, be abolished, and in lieu thereof, one be established at the house of William M. Donaldson, and one at McComb's Cross Roads, in said county.

Pickens. Benton. Macon. Coosa. Fayette. Mobile. Marion. Pike.

Sec. 6. *And be it further enacted,* That the following election precincts be abolished: one at Salubria, in Pickens county; one at Weir's & Elston's, in Benton county; also, one at Jas. R. Black's on Cahulga creek, in said county; one at Pole Cat Springs, and one at Coleman's in the county of Macon; one at J. A. Pylant's in Coosa county; one at the house of Fleman J. Thompson, in the county of Fayette; one at Alvanzes' ferry, in the county of Mobile; one at the House of Andy M. Downs, in Marion county; one at the house of A. C. Townsend, and another at the house of Benjamin Collier, in Pike county.

Butler. Pike. Pickens. Marion. Mobile.

Sec. 7. *And be it further enacted,* That the following precincts be established: one at Henry Solomons, in Butler county; one at the house of Lewis Fowler, one at Henry Herrens, one at John Nobles, and one at John Sellers, in the county of Pike; one at Bridgeville and one at McCracken's Store, in Pickens county; one at the house of M. A. Price, and one at John Lawhorn's, in the county of Marion; one at Daniel Simmons, near the Bridge on the eight mile creek, in Mobile county; one at Knox's Store, one at

Coosa. Macon. Benton. Fayette. De Kalb. Cherokee. Pike.

Captain William House's Store, and one at the house of James Lindsey, in Coosa county; and also, one in the village of Cubahatchee, in Macon county; one at Joshua Teague's Cross Roads, (at Corn Grove Post Office) in the county of Benton, also, one at Captain Defree's muster ground, in said county; one at Charles Bets, in the county of Fayette; one at Robert Hughes', in the county of De Kalb; and one at the house of Robert Brown, on Ball Play creek, in the county of Cherokee; and one at Charles Hodges', in Pike county.

Montgomery.

Sec. 8. *And be it further enacted,* That the election precinct heretofore established at Bonhams, be abolished, and in lieu thereof, one be and hereby is established at Mrs. A. Reeves, at the muster ground, in the county of Montgomery.

Lowndes.

Sec. 9. *And be it further enacted,* That the election precinct heretofore established at Curtis Hays, in Lowndes county, is hereby abolished, and in lieu thereof, one be established at Hardy's shop.

Baldwin. Talladega.

Sec. 10. *And be it further enacted,* That the election precinct heretofore established at the house of William Weeks, be abolished, and establish in lieu thereof, one at the house of John Pierce, and one at the house of James Hall, in Baldwin county; and also, one at the house of Garrett Johnson, and one at the house of James Armstrong, in the county of Talladega.

Cherokee. Tallapoosa.

Sec. 11. *And be it further enacted,* That the election precinct heretofore established at Robert Alexander's, in Cherokee county, is hereby abolished, and that one be established in lieu thereof, at the house of A. B. Rowden, in said county; also, one at the house of Robert Espy, in the county of Tallapoosa.

Randolph.

Sec. 12. *And be it further enacted,* That from and after the passage of this act, the election precincts for the county of Randolph, be, and they are hereby arranged in the following order, to wit: the muster ground, or man's house at which said muster ground may be ordered, in each captain's beat in Randolph county, be, and the same is hereby considered and made a lawful and legal election precinct, in said county, with the exception of the precinct established at the gold mines, in said county; which is hereby considered a legal precinct, any law to the contrary notwithstanding.

Lowndes.

Sec. 13. *And be it further enacted,* That the election precinct heretofore established at the house of J. F. Knight, in the county of Lowndes, be, and the same is hereby removed to the house of Mrs. Polly Knight, in said county.

Benton.

Sec. 14. *And be it further enacted,* That the election precinct heretofore established at the house of Philip Gees, in the county of Benton, be, and the same is hereby abolished, and one established in lieu thereof, at the house of Mark Phillips, in said county.

De Kalb.

Sec. 15. *And be it further enacted,* That an election precinct be and is hereby established at Camden, in De Kalb county.

Barbour.

Sec 16. *And be it further enacted,* That the election precinct at the house of Robert Richards, in beat number twelve, in the county of Barbour, be, and the same is hereby abolished, and an election precinct established at Emerysville, in said beat.

Coosa.

Sec. 17. *And be it further enacted,* That the election precinct at North Wetumpka, in Coosa county, be, and the same is hereby abolished.

Sumter.

Sec. 18. *And be it further enacted,* That an election precinct be also established at the Cut Off Mills, and one at Hatches' school house, in Sumter county.

Butler.

Sec. 19. *And be it further enacted,* That the election precinct now established at the house of James Jones, in the county of Butler, be, and the same is hereby abolished, and one be established in lieu thereof, at the house of Wilkes B. Waters, in said county.

Pickens.

Sec. 20. *And be it further enacted,* That the election precinct heretofore established at the present residence of John O. Cummins, and the precinct known as Tier's precinct, both in the county of Pickens, be, and the same are hereby abolished, and an election precinct be established at the town of Bridgeville, in said county.

Marengo.

Sec. 21. *And be it further enacted,* That additional precincts be established in the county of Marengo; one at the house of Bailey Maniss, and one at McKinley, in said county.

Approved, January 2, 1841.

[No. 38.] AN ACT

Regulating the mode of collecting Costs accruing in the Supreme Court.

Clerk may commence suit, &c.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That it shall be lawful for the clerk of the supreme court, in the name of the successful party, to commence and prosecute any motion against any sheriff or coroner, or his security or securities, in the circuit court of the county for which he is such sheriff or coroner, for failing to return any execution from the supreme court, or to make the money on any execution from said supreme court, where there is sufficient property, or failing to return any execution from said court, or making a false return thereon, or failing to pay over money made on any execution on demand made, under the same rules and regulations as now govern motions against such officers, and their securities, for said respective causes, where executions issue from the circuit courts.

Evidence.

Sec. 2. *And be it further enacted,* That on the trial of any such motion, where the execution has not been returned by the sheriff or coroner, and received by the clerk of the supreme court, the certificate of said clerk, under the seal of the court, stating when the execution issued, its amount, who against, who in favor of, when returnable, and that the same was put in the post office, Evidence. stating the time directed to said sheriff or coroner, and that the postage on said package was paid, shall be sufficient evidence of the contents of said executions, and that the same has been received by said officer, and sufficient to dispense with the production of said execution, or any other part of the record of said supreme court, on the trial of said motion, unless said officer shall deny by affidavit sworn to, that said execution ever came to his hands, or that it was returned to the proper office by due course of mail, or that the money could not be made on the execution, as the case may be.

Sec. 3. *And be it further enacted,* That where execution has been returned, a certified copy thereof and of the indorsements thereon, under the hand and seal of office of said clerk, shall be sufficient evidence on any such motion, of the issuance and return of any such execution, and of the contents of said execution, and return thereon.

Sec. 4. *And be it further enacted,* That on the trial of any motion under this act, it shall not be necessary to produce the judgment of the supreme court, or any copy thereof.

Sheriff's fee. Sec. 5. *And be it further enacted,* That hereafter, the sheriffs and coroners, collecting executions from the supreme court, shall be entitled to a fee of one dollar, out of the person against whom the same issued, for his services in collecting the same: *Provided,*

Proviso. that the plaintiff in execution shall in no case be liable for the costs of the motion when unsuccessful, but in that event they shall be paid by the clerk.

Repeal. Sec. 6. *And be it further enacted,* That all laws contravening the provisions of this act, be, and the same are hereby repealed.

Approved, December 23, 1840.

[No. 39.]

AN ACT

To alter and amend the law respecting Dowers.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, it shall and may be

Release, &c. lawful for any *feme covert* residing without the limits of this State, to release her right of dower in any land lying in this State, by deed of release, acknowledged before any notary public, or judge of any court of record in the State, Kingdom, or Territory, in which she may reside.

Claim. Sec. 2. *And be it further enacted,* That the claim to dower in any land lying and being in this State, by the widow of any grantor, who shall be a non-resident of the same, at the time of the conveyance thereof, shall be forever barred, unless asserted before the proper tribunal within twelve months after the death of her husband, who granted the said land.

Approved, December 21, 1840.

[No. 40.] AN ACT

For the payment of the Directors of the Bank of the State of Alabama, and its several Branches, for the year eighteen hundred and forty.

Appropriations for payment of Bank Directors.

Decatur.

Mobile.

State Bank.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the following sums may be and they are hereby appropriated, from the funds of the Bank of the State of Alabama, and its several Branches, for the payment of the persons mentioned, for their services as Directors of said Bank and Branches during the present year, to wit: to Thomas Lile, the sum of four hundred and sixty dollars, for ninety-two days services as director; to James C. Malone, the sum of three hundred and eighty-five dollars for seventy-seven days of like services; to John Glass, the sum of three hundred and ten dollars for sixty-two days of like services; to George W. Carroll, the sum of two hundred and ninety-five dollars for sixty-nine days of like services; to James Fennell, the sum of one hundred and eighty dollars for thirty-six days of like services; to John Berry, the sum of one hundred and five dollars for twenty-one days like services; all in the Branch of the Bank of the State of Alabama, at Decatur; to be paid by the cashier of the said Branch, out of its funds, he taking proper vouchers therefor. To Robert Broadnax, the sum of seven hundred and ninety-eight dollars for one hundred and fourteen days services; to C. M. Godbold, the sum of seven hundred and seventy-seven dollars for one hundred and eleven days services; to D. D. Kane, the sum of seven hundred and ninety-one dollars for one hundred and thirteen days services; to W. J. Ledyard, the sum of seven hundred and eighty-four dollars for one hundred and twelve days services; to L. Mauldin, the sum of nine hundred and twenty-four dollars for one hundred and thirty-two days services; and to D. White, the sum of eight hundred and nineteen dollars for one hundred and seventeen days services as Directors of the Branch of the Bank of the State of Alabama, at Mobile, to be paid out of the funds of said Branch Bank by the cashier thereof, who shall take the proper vouchers therefor from the persons so paid. To James Hogan, the sum of five hundred dollars for one hundred and twenty-eight days services; to William Clare, the sum of five hundred dollars for one hundred and thirteen days services; to Joel White, the sum of five hundred dollars for one hundred and twenty-one days services; to S. G. Frierson, the sum of four hundred and seventy-five dollars for nine-five days services; to James Guild, the sum of four hundred and forty dollars for eighty-eight days services; to J. M. Withers, the sum of five hundred dollars for one hundred and five day services; and to Robert Crauthers, the sum of twenty dollars for four days services, all as Directors of the Bank of the State of Alabama, at Tuscaloosa; to be paid out of the funds of said Bank by the cashier thereof, who shall take the proper vouchers therefor from the persons so paid. To Theadocius W.

Montgomery. Brenard, the sum of fifteen dollars for three days services; to James M. Munman, the sum of fifteen dollars for three days services; Samuel D. Hollonquirt, the sum of fifteen dollars for three days services; to Henry W. McMorris, the sum of ten dollars for two days services; to Bolling Hall, the sum of two hundred and seventy dollars for fifty-four days services; to Charles S. Lucas, the sum of two hundred and twenty dollars for forty-four days services; to Robert Ashurst, the sum of two hundred and thirty dollars for forty-six days services; to Jeremiah M. Frioue, the sum of two hundred and eighty-five dollars for fifty-seven days services; to Thomas J. Vickers, the sum of two hundred and sixty dollars for sixty-three days services; and to Elijah C. Wallace, the sum of one hundred and fifty dollars for thirty-one days services, all as Directors of the Branch of the Bank of the State of Alabama, at Montgomery; to be paid out of the funds of said Bank by the cashier thereof, who shall take the proper vouchers therefor from the persons so paid.

Manner of paying Directors changed.

Sec. 2. *And be it further enacted*, That the compensation allowed as the per diem pay to the Directors of the State Bank and its Branches, shall hereafter be paid by the cashier of their respective Banks, as other expenses, and the amount so paid to each of the directors shall be included in the annual report of the cashier of the several Banks to the Legislature; and all laws or parts of laws, contrary to the provisions of this section, be and the same are hereby repealed.

Approved, January 7, 1841.

[No. 41.]

AN ACT

Making appropriations for the year one thousand eight hundred and forty-one.

Appropriation for State officers, &c.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That the following sums of money be, and the same are hereby appropriated out of any money in the Treasury, not otherwise appropriated, to be paid to the following persons, in payment of their salaries, for the year one thousand eight hundred and forty-one, to wit: to the Governor of the State, the sum of three thousand five hundred dollars; the Secretary of State, Comptroller of Public Accounts, the State Treasurer, each, the sum of twelve hundred dollars; the two Chancellors, each, the sum of two thousand dollars; to the Judges of the Supreme Court, each, the sum of twenty-six hundred dollars; to the Judges of the Circuit Court, each, the sum of two thousand dollars, except the Judge of the Fifth Judicial Circuit, and to him, the sum of fifteen hundred dollars; to the Attorney General, the sum of four hundred and twenty-five dollars; to the Solicitors of the several Circuits, each, the sum of two hundred and fifty dollars; to the Quarter-Master-General, the sum of two hundred dollars; to the Adjutant and Inspector-General, the sum of four dollars for each day he may be in actual service, by order of the Governor; for the pay of the Secretary of the Senate and Clerk of the House of Representatives, the sum of seven dollars per day, each, during the present session; to the Assistant Secretary to the Senate, and the Assistant and Engrossing Clerks of the House of Representatives, each, the sum of five dollars per day, during the session, or their term of service; to the Doorkeepers of the Senate and House of Representatives, and Messenger of the House of Representatives, each, the sum of five dollars per day, for each day of their services, during the present session; to the Secretary of State for indexing the laws, copying the journals of both Houses of the present session of the General Assembly, preparing the whole for the press, and superintending the printing thereof, the sum of three hundred dollars; to the Secretary of the Senate and Clerk of the House of Representatives, each, the sum of one hundred and fifty dollars, for bringing up and completing the journals of their respective Houses, and filing away and properly arranging the papers of the present session. Appropriations.

Sec. 2. *And be it further enacted,* That the sum of five thousand dollars be, and the same is hereby appropriated to defray the contingent expenses of the State Government, payable out of any moneys in the Treasury, not otherwise appropriated. Contingent fund.

Sec. 3. *And be it further enacted,* That the sum of thirty-six thousand dollars be deposited in the State Bank to the credit of the Treasurer of the State; and the Comptroller of Public Accounts is hereby authorized to draw his warrant on the Treasurer for the same, in favor of the builders of the penitentiary, under the restrictions and regulations fixed by law. Penitentiary.

Sec. 4. *And be it further enacted,* That the sum of thirty dollars be, and the same is hereby appropriated to Thomas J. Judge, for prosecuting to conviction three slaves, Jim, Dave, and Lewis, charged with murder, the property of Jeremiah Jackson of the county of Autauga. T. J. Judge.

Approved, January 8, 1841.

[No. 42.]

AN ACT

Making appropriations for the payment of Members of the General Assembly and the Officers of the two Houses.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the sum of forty-five thousand dollars, be and the same is hereby appropriated for the payment of the members of the present General Assembly, and the officers of the two Houses, out of any money in the Treasury, not otherwise appropriated. Pay of Members.

Approved, January 2, 1841.

[No. 43.]

AN ACT

To explain an Act, entitled an Act to appoint Administrators in certain cases.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the aforesaid act shall not be so construed as to prevent the judges of the several county courts, from granting letters of administration on the estates of deceased persons, to the sheriff or coroner of the county, *ex officio*, under the provisions of the several laws existing previous to the passage of the act, of which this act is explanatory.

Act explained

Approved, January 2, 1841.

[No. 44.]

AN ACT

Concerning County Court Judges.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That hereafter judges of the county courts of this State, who have been regularly licensed to practice law, be allowed to practice in the several counties of this State: *Provided*, that they shall not be engaged directly or indirectly, in any cause which may have been tried or determined before them: *And provided further*, that they shall not be absent at the time of holding any court, or on any return day, required by law, for them to hold or appoint.

Allowed to practice.

Proviso.

Powers.

Approved, January 9, 1841.

[No. 45.]

AN ACT

For the relief of Alexander B. Puryear, of Monroe County.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly, convened,* That the Comptroller of Public Accounts be, and he is hereby authorized and required to issue his warrant on the Treasurer, in favor of Alexander B. Puryear, for the following sums, viz: for the sum of six hundred and seventy-five dollars, being one half of the assessed value of a man slave, by the name of Dave; also, the sum of four hundred and twenty-five dollars, being one half of the assessed value of a man slave, by the name of Morris, both being executed by the direction of law.

A B Puryear.

Approved, December 15, 1840.

[No. 46.]

AN ACT

To establish the General Ticket System in Elections for Representatives in Congress, from the State of Alabama.

Privileges of Voters.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That each qualified voter of this State, shall be entitled to vote at the next general election, and every two years thereafter, for the whole number of representatives in Congress, to which this State now is, or by any subsequent apportionment, may, hereafter, be entitled; and among those persons, who shall be voted for, as representatives in Congress, at the next general election, the five persons having the highest number of votes, throughout the State, shall be deemed and considered duly elected representatives to the Congress, next ensuing such election.

Duty of sheriff.

Sec. 2. *And be it further enacted,* That it shall be the duty of the sheriffs of the several counties in this State, at the next general election after the passage of this act, and every two years thereafter, to open a poll and hold an election for representatives in Congress, agreeably to the manner pointed out in the foregoing section; they shall provide a separate box for the Congressional ticket, as at present required by law; they shall within thirty days after the election make their respective returns of the election, by sending them carefully enveloped and sealed, by special messenger, addressed to the Governor of the State, and shall respectively, they and their securities, be subject to a penalty of one thousand dollars, recoverable by action of debt, to be prosecuted by the attorney general, or the proper solicitor, in the circuit court of the proper county, in case they fail so to do, within the time prescribed, as aforesaid: it shall, moreover, respectively be their duty to make out three lists of the voters for representatives in Congress; one of these, they shall deliver to the judge of the county court of the proper county, to be filed in his clerk's office; one other, they shall respectively retain; and the third, they shall carefully envelope, seal, and forward to the Governor, to be filed in the executive office, with the returns of the election. The special messenger, who shall be employed to bear the returns of elections, as aforesaid, shall receive from the Governor, a warrant on the treasurer, for three dollars for every thirty miles travelling to, and returning from the seat of Government, and three dollars for defraying expenses of one day's delay.

Votes to be compared.

Election to be declared by proclamation.

Sec. 3. *And be it further enacted,* That so soon as all the returns of the elections for representatives in Congress are received, or at the expiration of thirty days from the election, it shall be the duty of the Governor, in the presence of the Secretary of State, Comptroller and Treasurer, or any two of them, to open the returns of election, as aforesaid, and count them; and it shall be his duty to declare by proclamation, with all convenient despatch thereafter, what persons have been elected representatives in Congress; he shall, also, cause to be made out and published, a state-

statement of the names voted for, and the aggregate vote which each person received: it shall be the duty of the Governor to furnish to representatives elect, certificates of their election, under the great seal of the State; and in case of a tie, it shall be his duty to order a new election; in case of vacancy by death, resignation or otherwise, it shall be his duty to order an election to fill the vacancies, making proclamation of the same, and also, issuing writs of election to the several sheriffs; which election shall not be holden with less than thirty days previous notice by proclamation. Elections in case of a tie, and to fill vacancies, shall be holden as near as may be, to the manner prescribed for holding regular elections.

Vacancies.

Sec. 4. *And be it further enacted,* That after any and every new apportionment of representatives, among the several States by Congress, it shall be the duty of the Governor of this State, to publish and declare to the electors of this State, by proclamation, for three months, the number of representatives in Congress to which this State will be thereafter entitled; and it shall be the duty of the electors, sheriffs, and all others concerned, to govern themselves accordingly, thence forward, until the next succeeding apportionment, when information shall be communicated to them in like manner.

New apportionment.

Sec. 5. *And be it further enacted,* That in cases where this act may be silent touching the duty of sheriffs, they shall be governed, as far as applicable, by the general law of this State, concerning elections for representatives in Congress, as at present existing and all laws and parts of laws, contravening the provisions of this law are hereby repealed: *Provided,* that the State shall be divided into districts, after every apportionment by Congress, as heretofore, with a view that a member to Congress may be selected from each district, by the qualified electors throughout the State, as herein directed.

Sheriff's to be governed.

Approved, January 1, 1841.

[No. 47.] AN ACT

To amend a certain Act therein named.

Whereas, an error was made in enrolling a certain bill, which became a law at the last session of the General Assembly, in inserting the name of J. W. Huey & Co., instead of T. W. Huey & Co., the title of which law is "an act for the payment of certain claims against the State of Alabama:" therefore,

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the amount of money directed by said act, to be paid to J. W. Huey & Co. be, and the same is hereby directed to be paid to T. W. Huey & Co.

Act changed.

Approved, December 11, 1840.

[No. 48.]

AN ACT

To authorize the Tax Collectors and Clerks of the County Courts of the several Counties in this State, to receive in payment of public dues, certain claims therein named.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the first day of January, one thousand eight hundred and forty-one, the tax collectors in the several counties of this State, shall, and they are hereby authorized to receive for taxes, due the said counties, such jurors' certificates, as shall be issued by the clerks of the circuit courts for said counties, or the certificates issued by the clerks of the county courts; and the said certificates shall be received and accredited to the holders thereof, in lieu of money for the amount of such taxes, as may be assessed and due the said counties, any law to the contrary, notwithstanding.

Tax collectors to receive juror's certificates.

Sec. 2. *And be it further enacted,* That it shall hereafter be the duty of the clerks of the county courts of this State, to receive in payment, for any dues that are now by law payable to them, by virtue of their offices, and are county dues, any State claims, which by law, are properly chargeable on said counties, any law or usage to the contrary, notwithstanding.

County treasurers.

Approved, December 22, 1840.

[No. 49.]

AN ACT

To wind up the Courtland Land Office.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That on the first day of March, one thousand eight hundred and forty-one, the office of register and receiver of the Land office at Courtland, shall be abolished; and that from and after that time, the duties of said officer shall be performed by the Secretary of State, *ex officio;* and that it shall be the duty of said register and receiver of the land office at Courtland, to transmit all the books and papers belonging to the same to the Secretary of State.

When abolished.

Sec. 2. *And be it further enacted,* That it shall be lawful for all persons who have purchased lands, which have been, or may be forfeited for non-payment, to make payment for the same at any time before the first day of February, one thousand, eight hundred and forty-two; and that it shall be the duty of the Secretary of State, on said first of February, one thousand eight hundred and forty-two, to offer at public sale, all the lands belonging to said office, which may be forfeited, or remain unsold, after having given thirty days previous notice of the sale, in three newspapers, printed in North Alabama.

Payment extended.

Sec. 3. *And be it further enacted,* That the Governor shall appoint two commissioners, whose duty it shall be to examine the land office at Courtland, and make final settlement of the accounts of said officer of register and receiver, and all other officers of the same, whose accounts remain unsettled.

Commissioners to be appointed.

Approved, January 9, 1841.

[No. 50.]

AN ACT

To provide for the election of Sheriffs in certain cases.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That whenever, at any general election, in any county in this State, there may be or may have been, no election of a sheriff, by reason of an equal number of votes between the two highest candidates for said office, the acting sheriff shall forthwith advertise, at the various precincts in his county, that an election for sheriff will be held thirty days thereafter, specifying the day on which the election will be held; at which time he shall proceed to hold said election, in the manner now required by law for holding elections, and the person receiving the highest number of votes, shall, (after executing the necessary bond and taking the oaths of office,) be deemed and held as the sheriff of said county, for the term of three years, from the last general election; and if at said election, there be an equal number of votes, between the two highest candidates, the acting sheriff shall continue to hold an election for said office, from time to time, (always giving thirty days notice,) until a sheriff is elected.

Election to be held.

Sec. 2. *And be it further enacted,* That whenever there is no election for sheriff, as contemplated in the first section of this act, the then acting sheriff of the county shall, and he is hereby authorized and required, to perform all the duties pertaining to the said office of sheriff, until a sheriff is duly elected, in the manner required by the second section of this act.

Acting sheriff to perform duties.

Approved, January 2, 1841.

[No. 51.]

AN ACT

To abolish Brigade Encampment Drills in certain Brigades and Divisions therein named.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, so much of a law as requires annual brigade encampment drills, be and the same is hereby repealed, so far as the same applies to the ninth division, the eighteenth and ninth brigades; the seventh division, the eighth brigade; fourth division, the tenth division, the sixteenth brigade; eighth division, second brigade; eighth division, second brigade; first division, eleventh brigade; fifth division and the seventh brigade of Alabama militia, any law, usage or custom to contrary, notwithstanding.

Repeal.

Sec. 2. *And be it further enacted,* That it shall be the duty of all officers within the above brigades, that have the custody of the tents, camps, equipage and other articles, purchased by the State for the several brigade encampment drills, in this State, to

Camp equipage, &c.

deliver the same over, on demand, to the quarter master general of this State, or to his order; and it shall be the duty of the said quarter master general, to take charge of the camp tents, equipage and other articles, heretofore purchased, as aforesaid, in the same manner as he is now required by law to take charge of the military stores and arms of this State: *Provided*, that the Governor be, and he is hereby authorized to appoint some suitable person to sell said tents and camp equipage, giving at least thirty days notice of the time and place of sale, and pay the money over to the State Treasurer.

Proviso.

Approved, January 9, 1841.

[No. 52.]

AN ACT

To compel County Treasurers to make a full and explicit exhibit of the finances of their respective Counties, in each and every year.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That from and after the passage of this act, the county treasurer of each and every county, shall in each and every year, at the first commissioners' court for said county, make a full and complete exhibit of the indebtedness of said county, and also the means to liquidate the same, so far as lies in his power: and also to make out a transcript, including the sum, and deposit it in the office of the clerk of the county court of said county, for the inspection of each and every person who may wish to examine the same.

Annual exhibit to be made

Sec. 2. *And be it further enacted*, That it shall be the duty of said clerk, to take especial care of said copy, and exhibit it to each and every person or persons calling therefor.

Penalty for failure.

Sec. 3. *And be it further enacted*, That if any treasurer fail to comply with the provisions of this act, it shall be the duty of said court to remove said treasurer from office forthwith.

Duty of clerks.

Sec. 4. *And be it further enacted*, That all acts contravening the provisions of this act, be and the same are hereby repealed.

Repeal.

Approved, December 15, 1840.

[No. 53.]

AN ACT

More effectually to enforce the performance of the duties of Sheriffs in certain cases.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That hereafter where a rule or notice shall issue against any late, or acting sheriff, and his securities in office, in any case now authorized by law, it shall be competent for the plaintiffs in such rule or notice, to recover judgment, against such of the parties as service may have been effected on, any law, usage, or custom, to the contrary notwithstanding.

Judgment in certain cases.

Approved, January 9, 1841.

[No. 54.]

AN ACT

To regulate the Practice in the Courts of Chancery, in this State.

Chancellor shall establish rules.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the chancellors of this State, shall prepare and adopt a system of rules for the regulation and government of proceedings in the courts of chancery, and from time to time amend the same: *Provided*, that they be not repugnant to, or inconsistent with, the laws of the land: *And provided*, they are approved of by the judges of the supreme court.

Proviso.

Testimony.

Sec. 2. *And be it further enacted*, That all testimony in chancery, shall be taken on interrogatories and cross interrogatories, which interrogatories and cross interrogatories, shall be filed with the register, and issue from his office with the commission.

Register's duty.

Sec. 3. *And be it further enacted*, That the register in chancery, after having their official bonds recorded in the clerk's office of the county court, of the county where the court of chancery may be held, shall lodge the same in the office of Secretary of State, on pain of being removed from office by the chancellor of the proper division.

Chancellor's powers.

Sec. 4. *And be it further enacted*, That the chancellors are hereby vested with power, each in their respective divisions, to remove from office any of their registers for misbehavior, malpractice, or any negligence in the duties of office, and to require of them new bonds, whenever they may deem it necessary.

Attachment.

Sec. 5. *And be it further enacted*, That for disobedience to any order or decree of the chancellor, and on a sufficient showing by affidavit, the chancellor may order process of attachment to issue, to bring the party before him, either in vacation or term time as the case may be, to show cause why he or she should not stand committed.

Injunction bond.

Sec. 6. *And be it further enacted*, That whenever an injunction is ordered to be dissolved, either with or without the six per cent. damage, and the injunction bond is ordered to have the force and effect of a judgment, it shall be the duty of the register, to certify the same, together with the transcript of the bond to the court of law, to the end, that the plaintiff at law, may have execution on the injunction bond, as well as for the six per cent. damage, if any be awarded.

Exceptions.

Sec. 7. *And be it further enacted*, That exceptions to bills, answers, and reports, shall be heard and determined by the register in the first instance, but subject to an appeal to the chancellor.

Feigned issue

Sec. 8. *And be it further enacted*, That whenever the chancellors shall direct a feigned issue to be tried by a jury at law, the issue shall be made upon a supposed wager as heretofore, and shall be tried in the circuit court, of the county in which the court of chancery may be held.

Sec. 9. *And be it further enacted,* That in all cases where the right and title to property, whether real or personal, shall be decreed to either of the parties, the decree itself shall vest the right and title in the party to whom it is decreed, and a deed of conveyance shall not be required to complete the title: *Provided,* that all such decrees vesting title to real estate, shall be recorded in the office of the clerk of the county court of the county in which such real estate shall lie, under the same laws of registration as are applicable to deeds and conveyances of lands.

Decree.

Proviso.

Sec. 10. *And be it further enacted,* That when service of a bill shall be made personally, on the defendant, and the defendant shall refuse or fail to answer the allegations in the bill, the same shall be thereby admitted, and the chancellor shall give the same order or decree thereon, as if answer had been filed confessing the same, except in case of infant defendants, *femes covert,* idiots, or lunatics, and cases of divorce.

On failure to answer.

Sec. 11. *And be it further enacted,* That it shall not be lawful to appoint a receiver in vacation.

Receiver.

Sec. 12. *And be it further enacted,* That no special motion or application shall be heard or granted in vacation, unless on proof that the opposite party, his or her agent or attorney, if residing within the limits of the State, has had reasonable notice, except applications for writs of injunction and *ne exeat* which may be made at any time, and without notice as heretofore.

Special motion, &c.

Sec. 13. *And be it further enacted,* That the registers in chancery shall have power to order bills to be taken as confessed for the want of answers in vacation, and to grant orders in vacation requiring publication to be made against non-resident defendants.

Power of Register.

Sec. 14. *And be it further enacted,* That guardians *ad litem* to minor defendants residing within the State, may be appointed, if the minor be fourteen years of age, with the written consent of the minor and guardian, certified by a justice of the peace; if minor defendants be under fourteen years of age, residing within the State, then the court may appoint any suitable person, who will consent to act as guardian *ad litem;* and if minors reside out of the State, of whatever age, publication shall be made as in other cases, and on proof of publication, the court may appoint a suitable person guardian *ad litem.*

Guardians.

Sec. 15. *And be it further enacted,* That in cases in equity where property in litigation is liable to be wasted, carried out of the jurisdiction of the court, or otherwise disposed of, it shall be lawful for the chancellor or any circuit judge, in vacation or in term time, to order process to issue, requiring the sheriff to take possession of said property, until the defendant, his agent or attorney in fact, give bond, with good security, to have said property forthcoming, and to abide and perform the further order and decree of the court, and if the defendant do not so give bond with security, within ten days, then it shall be lawful for the sheriff to deliver possession of the property to the complainant on his giving

Chancellor shall order Sheriff to take possession.

Proviso. the like bond: *Provided*, that before any such process shall be ordered, the complainant, his agent, or attorney in fact, shall make oath that the defendant is wasting or disposing of the property, or carrying it out of the State, or threatens to do so: *And provided also*, that the complainant, his agent or attorney in fact, give bond with good security, to indemnify the defendant for all cost and damages he may wrongfully sustain; and provided the case presented by the bill in other respects, will warrant the interference of a court of equity.

Appeal. Proviso. Sec. 16. *And be it further enacted*, That when an appeal or writ of error is taken to the supreme court, from the decree of a chancellor, all further proceedings on said decree, shall be thereby suspended: *Provided*, the appellant or plaintiff in error give bond with security, as in cases of error to the courts of law.

Exceptions. Sec. 17. *And be it further enacted*, That unless exceptions have been filed to the report of the master, the same shall be confirmed by the court after two days notice.

Guardian. Sec. 18. *And be it further enacted*, That where it shall appear to the chancellor, either by inspection or other proof, that a party either complainant or defendant, is an idiot, or lunatic, or from imbecility of mind is incapable of managing his affairs, it shall be lawful for the chancellor to appoint a guardian *ad litem*, though the party may not have been found an idiot or lunatic by a regular commission or inquisition of lunacy.

Feme covert. Sec. 19. *And be it further enacted*, That no *feme covert* shall file a bill for a divorce or other matter, otherwise than by her next friend, except in cases where her husband has joined with her in the bill.

Repeal. Sec. 20. *And be it further enacted*, That from and after the passage of this act, the chancellors shall not be required to alternate, but may hold courts for each other, at their option, and so much of the act establishing separate courts of chancery, as requires the chancellors to alternate, be, and the same is hereby repealed.

Approved, January 2, 1841.

[No. 55.]

AN ACT

Fixing the time of election and the tenure of office of Inspectors of Tar, Turpentine, Bagging, Rope, &c. in the City of Mobile.

Election Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That inspectors of tar, turpentine, bagging, and rope, &c. in the city of Mobile, shall hereafter be elected, in the manner and form now prescribed by law, on the third Monday in August, in each and every year; and the inspectors thus elected shall continue in office one year.

Sec. 2. *And be it further enacted,* That the inspectors heretofore appointed, and now in office, in the city of Mobile, shall hold their office until the third Monday in August, one thousand eight hundred and forty-one, at what time the first election under this act shall be holden.

Sec. 3. *And be it further enacted,* That all laws, and parts of laws, contravening the provisions of this act, be, and the same are hereby repealed. Repeal.

Approved, January 9, 1841.

[No. 56.] AN ACT

For the relief Willie D. Robbins, the Tax Collector of Sumter County.

Section. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That Willie D. Robbins, tax collector of Sumter county, for the year one thousad eight hundred and forty, be, and the same is hereby allowed until the first Monday in March next, to complete the collection of the taxes in said county, and to make final settlement and payment of the county tax of said county: *Provided,* that the securities of the said tax collector give their assent thereto in writing, to be filed in the office of the clerk of the county court of said county. Further time allowed Proviso

Approved, January 8, 1841.

[No. 57.] AN ACT

To change the time of holding the County Court of Marengo County.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the county courts of the county of Marengo, shall hereafter be begun and holden on the second Monday in February and August, in each and every year, instead of the times heretofore provided by law. Changed.

Sec. 2. *And be it further enacted,* That all writs and other process which have issued or may hereafter be issued returnable to said courts, as heretofore prescribed by law, be, and the same are hereby made returnable to said courts, on the second Monday of February and August.

Approved, November 6, 1840.

[No. 58.] AN ACT

To fix the time of holding the Circuit Court for the County of Sumter.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That hereafter the circuit court for Sumter county, shall commence on the Mondays next preceding the first Mondays of April and October in each and every year, and continue for three weeks, if necessary, for the completion of business.

Changed.

Sec. 2. *And be it further enacted,* That all process now issued, or which may be hereafter issued returnable at the time said courts are now, by law, required to be holden, shall be considered and deemed returnable at the time said courts are, by this act, required to be holden.

Process.

Sec. 3. *And be it further enacted,* That there shall be drawn, in all respects, as now required by law, for the county of Sumter, twenty-four additional jurors, who shall be summoned by the proper officer to attend the first week of the term of said court as traverse jurors, for the trial of all jury causes in each of said courts pending and undetermined who shall receive the same pay as is now allowed by law to traverse jurors in said county.

Additional jurors.

Sec. 4. *And be it further enacted,* That all laws and parts of laws contravening the provisions of this act, be, and the same are hereby repealed. Approved, January 7, 1841.

[No. 59.] AN ACT

To change the times of holding the County Courts of Dallas County.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the county courts of the county of Dallas, shall be held on the third Monday of February, and the second Mondays of August, in each and every year, and continue in session six judicial days.

Changed.

Sec. 2. *And be it further enacted,* That all writs and other process which now are or may hereafter be issued returnable to the approaching term of said county court, as now established by law, shall be, and the same are hereby returnable at the times herein provided, any law, usage, or custom, to the contrary notwithstanding. Approved, January 9, 1841.

Process.

[No. 60.] AN ACT

To fix the time of the sales by Sheriff in Greene County.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, the sheriff of Greene county and his successors in office, may proceed to sell any property real or personal, which may be levied on by him, by virtue of any execution or by an order of sale from any court of competent jurisdiction, before the courthouse door in the town of Eutaw in said county, on the first and second Monday in every month, upon giving such notices of sale, as are now required by law.

Sale when.

Sec. 2. *And be it further enacted,* That all laws contravening the provisions of this act, so far as the same relates to the county of Greene, be, and the same are hereby repealed.

Approved, January 5, 1840.

[No. 61.]

AN ACT

To Incorporate the Mobile Female Benevolent Society.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the association of individuals, ladies of Mobile, and commonly known as the Mobile Female Benevolent Society, and their successors be, and they are hereby declared to be, a body politic and corporate, under the name and style of the Mobile Female Benevolent Society, which corporation is hereby created for the purpose of affording relief to the sick and poor of Mobile, by distributing amongst them food, clothing, and medicines, and for such other charitable and benevolent objects, as they may think fit. Body politic.

Sec. 2. *And be it further enacted,* That the officers and members of said corporation and their successors, shall have power to adopt and ordain such rules and regulations, for the admission of new members, for the qualification and duties of members, generally, and for the government of said society, from time to time, as they may think necessary for the purpose of effecting and promoting the objects for which said society is formed, and alter or amend the same at pleasure: *Provided,* such rules and regulations shall not be opposed to the constitution and laws of this state. Rules.

Sec. 3. *And be it further enacted,* That the said corporation may have a common seal, which they may break and alter at their pleasure, and that under the name and style aforesaid, the said corporation shall be able and capable to purchase, to take and hold by purchase or otherwise, and to have, enjoy and possess, to itself, in perpetuity, or for any term of years any property, real or personal, of whatever kind or nature, and to sell, lease, alien, or dispose of the same, as the society may think proper; and by its name aforesaid, may contract, sue and be sued, plead and be impleaded, answer and be answered unto, in any court of law or equity, and have all the rights and privileges incident to bodies corporate, instituted for similar purposes. Powers.

Sec. 4. *And be it further enacted,* That no misnomer of the said corporation, in any act, doings or proceedings in its favor shall be void on that account, where the intention is manifest, but the same in such cases, shall be as efficient as if there were no misnomer. Misnomer, shall not make void.

Approved, January 8, 1841.

[No. 62.]

AN ACT

To Incorporate a Female Academy in the Town of Marion, Perry County.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly, convened,* That Edwin D. King, James S. Goree, Larkin Y. Taveant, A. C. Eland, Langston Goree, Francis Lowery, John Lockhart, and William E. Blassingame and their associates and successors in office be, and they are hereby constituted a body corporate by the name Body corporate.

and style of the trustees of the Judson Female Institute, and by that name shall have full power and authority to have and use a common seal, and the same to break, alter or amend at pleasure, to sue and be sued, to recognize or receive subscription for stock and donations, and to make purchases of real and personal estate, which shall inure to them and to their successors for ever, and to sell and dispose of the same, and to hold real estate: *Provided*, the same do not exceed the value of fifty thousand dollars, and to grant certificates or diplomas, or such other evidences of scholarship, as they may prescribe, and further, to pass all such by-laws, rules, and regulations, as the said corporation may deem essential for the government of the same: *Provided*, that such by-laws, rules, and regulations, be not repugnant to the laws and constitution of this State, or those of the United States.

Name and style. Powers. Proviso. Proviso.

Sec. 2. *And be it further enacted*, That the said trustees and their successors shall have power to establish and continue in the town of Marion, Perry county, a female academy, under such rules, regulations, and conditions as may be deemed necessary by them, under the power that has been or may be granted to them by the stockholders in said academy; and to do any and all such acts as other incorporated literary institutions of this State may lawfully do.

Further powers.

Sec. 3. *And be it further enacted*, That said trustees shall elect one of their members as president, and such other officers as may be necessary or desirable, and vacancies in the board of trustees, shall be filled by the stockholders or by the trustees in office, under such rules as may be prescribed by the stockholders in the academy.

Election

Sec. 4. *And be it further enacted*, That so long as the property, real and personal of said corporation, shall be used for purposes of education, the same shall be exempt from taxation of every kind.

Property exempt from taxation.

Approved, January 9, 1841.

[No. 63.]

AN ACT

To authorize the Directors of the Florence Bridge Company to establish rules.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That the president and directors of the Florence Bridge Company shall have power to ordain and establish such rules and regulations in regard to the security of said bridge, and the order, manner, and mode of crossing the same, as they shall think necessary, not being inconsistent with the provisions of their charter, nor the constitution and laws of this State; and to enforce such rules and regulations by fine, not exceeding ten dollars, for each and every violation thereof, before any justice of the peace: *Provided however*, that said rules and regulations be exhibited on each end of

Rules. Fine.

the bridge, with the fines for the violation thereof: *And provided also,* that for any violation of the rules and regulations established, the offender shall be liable to the company for special damages. Proviso.

Approved, January 9, 1841.

[No. 64.] AN ACT

For the promotion of the health and convenience of the city of Mobile, by the introduction of a supply of wholesome water into said city, to be used for domestic purposes, and the extinguishment of fires.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the agreement made and executed, by and between the Mayor, Aldermen and Common Council of the city of Mobile, of the one part, and Albert Stein, of the other part, bearing date the twenty-sixth day of December, A. D. one thousand eight hundred and forty, be and the same is hereby confirmed. Agreement.

Sec. 2. *And be it further enacted,* That all the rights, powers, privileges and immunities, which were granted to the Mobile Aqueduct Company, and to the Mayor and Aldermen of the city of Mobile, by an act of the General Assembly of the State of Alabama, passed on the twentieth day of December, one thousand eight hundred and twenty, not inconsistent with the terms of the before mentioned agreement, be and the same are hereby granted, vested in and confirmed to the said Albert Stein, and his assigns. Transfer of powers.

Sec. 3. *And be it further enacted,* That all the rights, powers, privileges and immunities, which were granted to the Mobile Aqueduct Company, and to the Mayor and Aldermen of the city of Mobile, by an act of the General Assembly of the State of Alabama, passed on the twenty-fifth day of December, one thousand eight hundred and thirty-seven, not inconsistent with the terms of the before mentioned agreement, be and the same are hereby granted, vested in, and confirmed to the said Albert Stein, and his assigns. Transfer of powers.

Sec. 4. *And be it further enacted,* That the said Albert Stein, and his assigns, by themselves and their agents, shall have full power and authority, to use such of the public roads in the county of Mobile, as may be in the direct route between the reservoir, and fountain head of the water works, hereby to be erected, and the city of Mobile, for the purpose of laying the pipes for conducting the water into said city, free from all charge or claim for damage therefor: *Provided,* that the said Albert Stein, and his assigns, shall, at their own proper cost and charge, keep and preserve, any portion of any of the said public roads, so used by them, as aforesaid, in full and complete repair, so long as the same may be used by them, as aforesaid. Privileges.

Sec. 5. *And be it further enacted,* That the said Albert Stein, and his assigns, shall have full power and authority to dispose of any and all of the aforesaid privileges, rights and immunities, by deed, and that the said Albert Stein, and his assigns, may mort- Powers.

gage the said privileges, rights and immunities, by deed, to all and every person or persons, whatsoever; and that the grantees of said Albert Stein, and his assigns, shall take and enjoy all and every right, privilege and immunity, which the said Albert Stein, might or could enjoy, by virtue of the aforesaid agreement, and this act, whether the same be granted absolutely, or by way of mortgage or pledge.

Approved, January 7, 1841.

[No. 65.]

AN ACT

To Incorporate the Town of Elyton, in the County of Jefferson, and for other purposes.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, the town of Elyton, in the county of Jefferson, be and the same is hereby incorporated, under the name and style of "the Intendant and Council of the town of Elyton;" and under that name, they shall be liable to sue and be sued, may plead and be impleaded, in all manner of suits, either in law or equity, may have and keep a common seal, and the same to break, alter and amend at pleasure; and in general, to do all acts, which are incident to bodies corporate, and to purchase, hold and dispose of, for the benefit of said town, real, personal or mixed property, to the amount of six hundred dollars.

Name and style.

Powers.

Sec. 2. *And be it further enacted,* That the limits of said incorporation, shall include the north-east quarter of section three, township eighteen, and range three, west of the basis meridian.

Limits.

Sec. 3. *And be it further enacted,* That there shall be five Councillors elected for said town of Elyton, on the first Monday in May, one thousand eight hundred and forty-one; which election shall be conducted by Major S. W. Hall, Col. M. Kelly and Thomas D. Sandford, any two of whom, shall have power to act, and shall give certificates of election to the five persons who may receive the highest number of votes. The polls of said election shall be opened at ten o'clock, before noon, and close at two o'clock, afternoon, of said day: *Provided,* that said managers shall be qualified by some justice of the peace, to conduct said election according to law.

Election.

Sec. 4. *And be it further enacted,* That all subsequent elections in said town, shall be conducted by any two of the Councillors to be appointed by the Board for that purpose; and, if from any cause, said election shall not take place on the day set apart for holding the same, the Board may appoint some other day, not exceeding sixty days from said first Monday in May, in each and every year.

How conducted.

Sec. 5. *And be it further enacted,* That all free white male persons, of the age of twenty-one years, who have been resident citizens of said town, for two months preceding said election, or

Voters.

any person who may own real estate in said town, shall be deemed qualified voters at any of said town elections.

Sec. 6. *And be it further enacted,* That within five days after said election is holden, the Councillors elect shall convene at some suitable place in said town, and take and subscribe an oath, before some person authorized to administer the same, that they will faithfully discharge the duties to them committed, without favor, affection or partiality; a certificate of which oath, shall be filed with the clerk of the Board of Councillors.

Oath.

Sec. 7. *And be it further enacted,* That when said Councillors are qualified, as declared in the sixth section of this act, they shall proceed forthwith, to elect, by a majority of votes, from their own body, an Intendant, whose duty it shall be to preserve and keep order at all meetings of their Board, and in his absence or incapacity, any member may be called to the Chair: the said Intendant shall approve all ordinances that may be passed by the Board, and shall be *ex officio* justices of the peace, for all purposes connected with said corporation, and the enforcement of its laws; and shall see that all ordinances are enforced, and shall be entitled to receive for his services, double the fees allowed to justices of the peace for Jefferson county.

Election of Intendant.

Sec. 8. *And be it further enacted,* That in all breaches of the by-laws of said corporation, where the same shall be a violation of the laws of the State, it shall be the duty of said Intendant to bind over said offender or offenders to appear at the next circuit court for said county, to answer said charge.

Duty of Intendant.

Sec. 9. *And be it further enacted,* That said Board shall be authorized to elect a clerk, treasurer, marshall, and such other officers for said town, as they may deem proper for the good government of the same, and shall affix their duties and compensation; which officers shall be removable at the pleasure of the Board, for neglect of duty or mal-practice in office; and said Board may require such bonds from their respective officers, as they may deem proper for the faithful performance of their several duties.

Election of officers.

Sec. 10. *And be it further enacted,* That said Board shall be authorized to levy and collect a tax, not exceeding one per centum on the property taxed; the poll tax shall in no case exceed seventy-five cents, and no property shall be taxed except such as is taxed by the State or county of Jefferson; and no tax, after a levy is made, shall be increased, except by a vote of the legal voters of said corporation; which shall be determined by an election, on giving ten days notice thereof.

To levy tax.

Sec. 11. *And be it further enacted,* That said Councillors or Board shall have exclusive control over the public streets, alleys and public springs, the wells and public works belonging to said corporation; they shall have power to enact patrol laws and to have them enforced, to quell riots and disturbances, suppress indecent and disorderly conduct, to prevent and remove nuisances, to punish offenders against the by-laws by a fine, not exceeeding ten dollars, and imprisonment, not exceeding twenty-four hours

Jurisdiction.

and to pass all such ordinances as may be necessary to carry into effect any of the foregoing grants or powers, and all other such ordinances, that may tend to promote the peace, harmony, good order and health of the citizens of said corporation: *Provided*, that none of said ordinances of said corporation shall conflict with the constitution or laws of this State.

Fines and executions

Sec. 12. *And be it further enacted*, That when any offender shall be fined, and shall refuse or neglect to pay said fine, he shall be proceeded against by execution; which execution shall have the same force and effect as if issued by a justice of the peace of the county upon civil judgment; and should said offender be unable to pay said fine, he may be imprisoned in the county jail, not exceeding forty-eight hours.

Vacancies.

Sec. 13. *And be it further enacted*, That the said Board shall have power to fill all vacancies, which may occur in their body by death, resignation or otherwise, until the next annual election; and any member of said Board may preside as Intendant *pro tem.* in absence of the Intendant proper; and a majority of said Board shall constitute a quorum to transact business.

Monthly meetings.

Sec. 14. *And be it further enacted*, That the said Board shall hold their meetings once a month, or oftener, if necessary, any two members of which may compel the attendance of absent members, assess fines for contempt or negligence on the part of any one of their body; which fine shall in no case exceed the sum of five dollars; *Provided*, the whole Board shall be present when any member is to be tried, and if the Board be equally divided, the defaulting member shall not be fined.

Proviso.

Sec. 15. *And be it further enacted*, That all laws and parts of laws, contravening the provisions of this act, be and the same are hereby repealed: *Provided*, that the said Intendant and Council, when organized, shall be authorized to levy a tax in accordance with the above recited act, for the twelve months next preceding said first day of May, one thousand eight hundred and forty-one.

Approved, January 9, 1841.

[No. 66.]

AN ACT

Excluding certain lands from the jurisdiction of the corporation of the Town of Benton, in the county of Lowndes.

Limits.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That the limits of the said town of Benton shall hereafter include no part of the lands of James Maull, not laid off into town lots, and that the jurisdiction of the corporation shall be confined to the limits prescribed in this act, any law, usage or custom to the contrary, notwithstanding.

Approved, December 1, 1840.

[No. 67.]

AN ACT

To repeal in part An Act Incorporating the City of Wetumpka.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That so much of the twenty-seventh section of said act of incorporation, as authorizes the sheriff of Autauga county, to sell all property in the city of Wetumpka, that may be levied upon within the limits of said city, be and the same is hereby repealed. Repeal

Approved, November 25, 1840.

[No. 68.]

AN ACT

To Incorporate the Marion Female Association.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the lot of land, and the buildings erected thereon, lying and situate in the town of Marion, in Perry county, bounded on the north by the lot and land of William N. Wyatt, east by the lot of said Wyatt, south by Monroe street, and west by a lot of land of Robert Carlisle, now in the possession of Nathan McMullin, shall be known and called the Marion Female Seminary. Boundaries.

Sec. 2. *And be it further enacted,* That William E. Jones, the present owner of said Seminary shall be, and he is hereby authorized to sell and convey the said Female Seminary to any person or persons who may be desirous and willing to purchase the same, in shares not exceeding fifty dollars, nor less than that sum; and that his certificate of stock and shares of that kind, to the amount of the purchase money, paid by him for said Seminary, shall vest in the purchaser and holder thereof, a good and sufficient title and interest to, and in said Seminary, to the amount of said certificate: *Provided,* that any number of shares may be included in one certificate, at the option of the purchaser. Authority to sell and convey Proviso

Sec. 3. *And be it further enacted,* That the purchasers of the said Seminary be, and they are hereby declared a body corporate, by the name and style of the Marion Female Seminary Association, and by that name and style, shall be capable of suing and being sued, pleading and being impleaded, in all manner of suits, to have and use a common seal, and the same to alter at pleasure, and may purchase and hold, real or personal estate, over and above the value of the said lot and building, to any amount not exceeding five thousand dollars, in manner and form, as is provided in the second section of this act, as to certificates and titles. Purchasers a body corporate

Sec. 4. *And be it further enacted,* That the stockholders shall have power to pass such by-laws, rules and regulations, as they shall deem proper for their government, and for the interest of all concerned: *Provided,* that they be not contrary to the laws of this State, and of the United States. By laws Proviso.

Sec. 5. *And be it further enacted,* That the purchasers and owners of the stock of said Seminary, shall be liable only to the

Liability.

amount of the stock, he may be holder of, and not further or more.

Separate property

Sec. 6. *And be it further enacted,* That all stock or shares in said Seminary shall be a separate, and not a joint interest or property.

Exempt from taxes.

Sec. 7. *And be it further enacted,* That the said Female Seminary, and all the property held and used for the benefit thereof, shall be free and exempt from taxation.

Certificate

Sec. 8. *And be it further enacted,* That the certificates of stock held by the owners of said Seminary, shall be assignable; and the assignee shall be entitled to all the rights, interests and privileges of the original or former purchaser or stockholder.

Approved, January 9, 1841.

[No. 69.] AN ACT

To amend An Act entitled An Act to Incorporate the Town of Franklin in the County of Macon, approved December 23, 1837.

Officers

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, the corporate authorities of the town of Franklin, in the county of Macon, shall be an Intendant, four Councilmen and a town Marshall, who shall be chosen by the qualified electors residing within the corporate limits of said town; and who shall hold their office for the term of one year.

Election

Sec. 2. *And be it further enacted,* That an election for Intendant, Councilmen, and Marshall, shall be held in the said town of Franklin, by William N. Tears, James V. Robertson and John W. Pew, on the first Monday in February, eighteen hundred and forty-one, and on the first Monday in February, in each and every year thereafter, an election shall be held for said officers, under the direction of two of the Councilmen, who shall be selected for that purpose by the said Intendant and Commissioners.

Intendant's powers.

Sec. 3. *And be it further enacted,* That the said Intendant shall be, and he is hereby authorized and empowered to exercise all the jurisdiction, duties and powers, which appertain to and are exercised by justices of the peace in Macon county, and shall be subject to the same penalties and liabilities; *Provided,* that the jurisdiction of said Intendant shall not extend beyond the corporate limits of said town.

Duty of Marshall

Sec. 4. *And be it further enacted,* That the said town Marshall shall be and is hereby authorized and empowered, to exercise all the powers, which appertain to and are exercised by constables in Macon county, and shall be subject to the same penalties and liabilities: *Provided,* that the jurisdiction of the said town Marshall, shall not extend beyond the corporate limits of said town.

Laws

Sec. 5. *And be it further enacted,* That the said corporation shall have power to ordain or pass all such ordinances and resolutions, and make all such regulations, as may by them be deemed necessary for the good order and government of said corporation, which shall extend to the cleaning and keeping in repair the streets of said town, to the removing and prohibiting trespasses on the same, to the collecting of taxes on all property, both real and personal, including poll taxes within said corporation, for the purpose of defraying the expenses of the same.

Exemption

Sec. 6. *And be it further enacted,* That the citizens of said town, who are subject to road duty, are hereby exempt from working on roads, without the limits of said incorporation; but shall be subject to work on the roads and streets within said incorporation, under the same penalties and restrictions as are now in force, for failure to work on roads in the county of Macon.

Sec 7. *And be it further enacted,* That all laws and parts of laws, contravening the provisions of this act be, and the same are hereby repealed.

Approved, January 9, 1841.

[No. 70.]

AN ACT

To change the time of holding the August Term of the Commissioners' Court of Roads and Revenue in the County of Henry.

Changed

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the August term of Commissioners' Court of Roads and Revenue for the county of Henry shall, from and after the passage of this act, be holden on the second Monday of August, in each and every year, instead of the first Monday, as now prescribed by law.

Sec. 2. *And be it further enacted,* That all laws and parts of laws contravening the provisions of this act be, and the same are hereby repealed.

Approved, December 22, 1840.

[No. 71.]

AN ACT

To provide for the authentication of the Record of the Circuit Court of Mobile County, in certain cases.

Record to have force and effect

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the minutes of the proceedings and judgments of the circuit court of Mobile county, for the fall term, one thousand eight hundred and forty, and which determined, on the twenty-third of December, one thousand eight hundred and forty, be, and are hereby declared to have the force and effect of records; and that the absence of the signature of the judge, shall not be construed to affect or impair the validity of the same.

Sec. 2 *And be it further enacted,* That in any case, at the said term, in which there was any verdict or judgment, and on which a motion had been entered before the day of the adjournment, aforesaid, or determination of the said court, as aforesaid, for an arrest of judgment for a new trial, or to set aside a non-suit, or upon a case reserved for the opinion of the judge of the said court, the said causes shall stand as if said motions had been granted, or as if said verdict had been set aside and a new trial ordered.

Approved, January 5, 1841.

[No. 72.] AN ACT

To declare the West Prong of Choctawhatchee river a public highway.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the west prong of Chactawhatchee river from its mouth to John Ard's Mills, in the county of Dale, is hereby declared a public highway.

Declared a public highway

Sec. 2. *And be it further enacted,* That if any person or persons, shall obstruct the navigation of said river, by building milldams, fishtraps, or in any way, such person or persons, shall forfeit and pay the sum of one thousand dollars, one half to the State, and the other half to any person who may sue for the same, recoverable before any court of law having jurisdiction of the same, and shall also, forfeit and pay all damages which any person or persons, may sustain by reason of such obstructions, recoverable in like manner, and all such obstructions may be removed by order of the county or circuit court, of the county through which said river runs, as a public nuisance.

Penalty

Approved, January 2, 1841.

[No. 73.] AN ACT

To authorize the Judge of the County Court and Commissioners of Roads and Revenue to levy a special Tax for the purpose of building a Courthouse in the County of Jefferson.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the judge of the county court and commissioners of roads and revenue of Jefferson county, be, and they are hereby authorized and required to levy a special tax for the purpose of building a courthouse in said county, which fund, when so raised, shall be appropriated to the purpose as aforesaid, under the direction and superintendance of said judge and commissioners, or their successors in office.

Tax to be levied

Sec. 2. *And be it further enacted,* That if the fund so raised, in eighteen hundred and forty-one, should not be sufficient for the purpose aforesaid, then and in that case, the said judge and commissioners or their successors in office, shall from year to year, be authorized and required to levy said tax, until a sufficiency is raised to pay for the building of said courthouse.

Sec. 3. *And be it further enacted,* That the tax collector of said county shall be entitled to the same compensation for collecting said tax as is now authorized by law.

Compensation

Approved, January 9, 1841.

[No. 74.] AN ACT

For the benefit of the Tax collectors of Marshall County.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, it shall be lawful for the Sheriff of Marshall county, who is *ex officio* tax collector for said county, to demand and retain ten per cent. of the amount of all the taxes by him, hereafter to be collected, as compensation for assessing and collecting said taxes, any law, usage or custom to the contrary notwithstanding.

To receive 10 per cent.

Approved, January 5, 1841.

[No. 75.] AN ACT

To repeal in part an act, entitled "an act to regulate the proceedings of the Courts, and the compensation of Witnesses in the Counties of Lowndes, Talladega, Butler, and others," approved, January 9th, 1840.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That so much of the first and second sections of the above recited act, as extends to the counties of Butler, and Talladega, be, and the same are hereby repealed.

Approved, November 21, 1840.

[No. 76.] AN ACT

To change the time of holding the County Court of Lauderdale County.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the county court of Lauderdale county in said State, commence and be holden hereafter on and from the fourth Mondays in May and November, in each year, and that all process be made returnable accordingly.

Changed

Sec. 2. *And be it further enacted,* That all writs and other process returnable in said court, on the first Monday in January next, shall be held to be returnable, and be returned in said court on the fourth Monday in May next, and shall be subject to all such proceedings thereon, as if returned in terms on said last named day and none other, and that all parties in any and all suits, depending in said court, and witnesses who have been summoned to attend in said court, on the fourth Monday in January next, be held and bound to appear and answer, and to prosecute and give testimony at said next term of said court, herein provided.

Approved, December 18, 1840.

[No. 77.] AN ACT

To limit the session of the Circuit Court to three weeks in the County of Talladega.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, the regular session of the circuit court, in the county of Talladega, shall not exceed three weeks.

Approved, December 22, 1840.

[No. 78.] AN ACT

To Incorporate the Greensborough Lyceum, in the Town of Greensborough.

Body politic

Name and style.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the officers and members, and their successors, of the Greensborough Lyceum, founded in the year of our Lord, one thousand eight hundred and thirty-eight, for literary and scientific purpoes, shall be, and continue a body politic and corporate, under the name and style of the Greensborough Lyceum.

Powers.

Proviso.

Sec. 2. *And be it further enacted,* That said corporation shall have power and authority to make and adopt a constitution, and to alter the same, declaring the purposes and intentions of the association, and such rules and regulations as are necessary for the preservation and advancement of its interest, to declare the names and number of the different officers; their duty and term of service; and to make such by-laws for the government of its members, and the transaction of its business, as shall be deemed necessary and proper: *Provided,* that said constitution and by-laws are not inconsistent with the constitution of the State of Alabama, or the provisions of this charter.

Proviso

Sec. 3. *And be it further enacted,* That the said corporation shall have the power, right and authority, to receive, hold, purchase, grant, and alien, property, personal or real: *Provided,* that the said corporation shall not hold, or purchase real estate above the value of twenty thousand dollars; nor personal estate exclusive of books, maps, charts, engravings, furniture, lyceum of natural history, philosophic and scientific apparatus, and other articles properly belonging to such an institution, over the value of fifteen thousand dollars

Take deeds

To sell

Sec. 4. *And be it further enacted,* That the said corporation shall and may take by deed, grant, or devise, any real or personal estate whatever, subject to the reservations and restrictions contained in the foregoing section, and whenever real or personal estate exceeding in value, the amount permitted to the said corporation to hold, shall either accumulate or be given, granted, or devised to the same, the members of the said society, under the constitution and by license thereof, shall and may have the power and authority to give, grant, and dispose of the same to any seminary of learning, literary or scientific institution, under such terms, limitations, and conditions as may seem to them most expedient.

Proviso.

Sec. 5. *And be it further enacted,* That no misnomer of the Greensborough Lyceum, shall defeat or annul any gift, grant, devise or bequest to the same: *Provided,* the true intent of the parties shall sufficiently appear upon the face of the gift, grant, will or other writing, whereby any estate, or interest was intended to pass to the said Greensborough Lyceum.

Sec. 6. *And be it further enacted,* That no misnomer or non use of the rights, liberties, privileges, and authorities, hereby granted to the said Greensborough Lyceum, shall create or cause a forfeiture thereof, but in the event of a desolution of the said corporation, either by the voluntary act of its members, or in any other manner, they shall have and exercise the power and right to dispose of the property, real and personal, belonging to the same, in any manner which to them may seem expedient: *Provided always*, that no such disposition shall take place of such property, until all debts, liabilities, engagements, and responsibilities, due and owing by the said corporation, shall be fully paid, satisfied, and discharged: *And provided further*, that no individual responsibility shall have or attach to any of the officers or members of the said society, by reason of any debts contracted by the same; but that the said debts shall be collected from the effects of the corporation only.

Forfeiture shall not occur

Proviso

Proviso

Sec. 7. *And be it further enacted*, That this act shall be deemed a public act, and judicially taken notice of, without special pleading, and the same shall be liberally construed, for fully carrying into effect, the benificial purposes hereby intended.

Act public

Approved, January 9, 1841.

[No. 79.]

AN ACT

To amend an act to authorize Seth Lore and William Wellborn to erect a Wharf on the Chattahoochee river in the Town of Irwinton, Barbour County, approved, December 23d, 1837.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That from and after the passage of this act, the rights allowed to Seth Lore and William Wellborn, to erect a wharf on the Chattahootchee river, in the town of Irwinton, Barbour county, be, and the same are hereby repealed and the following rights, in lieu thereof, be established and allowed, until otherwise directed, that they be authotized to collect, demand, and receive of, and from, the owners or consignee of all goods, wares or merchandize, cotton or other article or articles, which may be shipped from, or loaded upon said wharf, at the following rates: for each bale of cotton, four cents; for each four bushel sack of salt, each, three cents; or other articles of like measurement, in the same proportion; for each barrel, three cents; for each hogshead or pipe, twelve and a half cents; for each cord of wood, twelve and a half cents; each thousand feet of lumber, thirty-seven and a half cents; all boxes, packages and merchandize, usually charged by measurement, at the rate of one half per cent. per foot; and for all steamboats, barges, flats or rafts, to receive and collect a sum not exceeding fifty cents per day, that they may remain at said wharf, after having taken in or discharged their cargo.

Rights repealed;

Rates.

Sec. 2. *And be it further enacted*, That all laws and parts of laws contravening the provisions of this act, be, and the same are hereby repealed.

Approved, January 1, 1841.

[No. 80.]

AN ACT

To alter the times of holding the Circuit Courts in the first Judicial Circuit.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That hereafter the terms of the several circuit courts in the first judicial circuit, shall be holding as follows, to wit: in the county of Washington, on the fourth Monday in March and September, and may continue in session six judicial days; in the county of Clarke, on the first Mondays after the fourth Mondays in March and September, and continue in session, six judicial days; in the county of Monroe, on the second Mondays after the fourth Mondays in March and September, and continue in session twelve judicial days; in the county of Marengo on the fourth Mondays after the fourth Mondays in said months, and continue in session twelve judicial days; and in the county of Perry on the sixth Mondays after the fourth Mondays in March and September, in each and every year, and continue in session until the business is completed.

Washington. Clarke. Monroe. Marengo. Perry.

Sec. 2. *And be it further enacted,* That all writs and other process which have issued, or hereafter may be issued returnable to said courts as now provided by law, be, and the same are hereby made returnable to said courts, to be holden at the times specified in this act.

Process.

Sec. 3. *And be it further enacted,* That all acts, or parts of acts contravening this act, be, and the same are hereby repealed.

Approved, January 7, 1841.

[No. 81.]

AN ACT

Concerning a certain Turnpike Road therein named.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That that part of the turnpike road leading from Wetumpka to Scullacogga, commencing at Wetumpka and terminating at the town of Rockford, shall be under the jurisdiction and control of the commissioners' court, of Coosa county, in the same manner as other public roads, whenever James R. Powell, the owner thereof, shall accept this act, as a part of his charter to said road, which acceptance shall be entered on record, in the clerk's office of the county court of Coosa county, after which, that part of said turnpike above named, shall not be subject to any of the restrictions in any of the acts incorporating the turnpike road from Scullacogga to Wetumpka.

Charter amended

Sec. 2. *And be it further enacted,* That after this act shall take effect, the owners of said road shall not be entitled to receive, for toll, on said turnpike, more than one half of what is, by law, now allowed, and shall erect but one gate on said road, and shall be liable to the like penalties for charging excessive toll, as is now provided by law.

Toll reduced.

Sec. 3. *And be it further enacted,* That all the laws now in force, in regard to keeping in repair the turnpike road from Wetumpka to Scullacogga, shall remain in full force in regard to that part of said road, which is not made a public highway, by the provisions of this act. Law to remain in force.

Approved, January 9, 1841.

[No. 82.] AN ACT

To authorize the same individual, to hold the office of Clerk of the Circuit and County Courts of Marion County.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That it shall hereafter be lawful, for the same individual, to hold the office of clerk of the circuit and county courts of Marion county, at one and the same time, any law to the contrary notwithstanding.

Approved, January 1, 1841.

[No. 83.] AN ACT

Permanently to locate the Seat of Justice of Marshall County, and for other purposes.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the sheriff of Marshall county shall open and hold an election at the different precincts in said county, for the purpose of permanently locating the seat of justice, for the said county of Marshall, in the following manner, to wit: the said sheriff shall, twenty days previous to the first Monday in March next, notify the people of said county by public advertisement, put up at six or more public places in the said county of Marshall, that the aforesaid election, will be held as above specified, on the first of March next; at which time it is made lawful for all free white male citizens, over the age of twenty-one years, who are resident citizens of the said county, to vote at said election, for any place in the said county, they may think proper, and upon casting up the votes, the four places receiving the greatest number of votes shall be subject to a second election. Sheriff to hold election. Notice. Who entitled to vote.

Sec. 2. *And be it further enacted,* That it shall be the duty of the sheriff aforesaid, after giving twenty days notice at, at least six public places in the said county, to hold an election on the first Saturday in May next, at all the precincts in said county, at which time the four places having received the largest number of votes as specified in the first section of this act, shall be put in nomination, and be voted for as in the first election, and the three places which shall receive the greatest number of votes at said election, shall be subject to a third election, to be held in the manner aforesaid. Second election. When.

Third election.
When.

Sec. 3. *And be it further enacted,* That it shall be the duty of the sheriff aforesaid, after giving twenty days notice by advertisement, at six or more public places in the said county, to hold an election on the first Saturday in July next, at all the precincts in the said county, at which time the sheriff aforesaid, shall place in nomination the three places having obtained the greatest number of votes at the last election, to be voted for as at that election, and the two places that receives the greatest number of votes at said election, shall be the two places put in nomination to be voted for on the first Monday in August next.

Fourth election.
When.

Sec. 4. *And be it further enacted,* That it shall be the duty of the sheriff of the said county of Marshall, after giving twenty days notice by advertisement, at six or more public places in said county, to place in nomination the two places, which received the largest number of votes at the July election, to be voted for on the first Monday in August next, and the place which receives the largest number of votes on the said first Monday in August next, shall be the permanent seat of justice for said county of Marshall, any law, usage, or custom, to the contrary notwithstanding.

Votes to be compared.

Sec. 5. *And be it further enacted,* That it shall be the duty of the sheriff aforesaid, to cause all the votes given in at the several precincts, to be brought together, at Marshall, within the three first days following each election, to be compared by the said sheriff and the judge and clerk of the county court, and on ascertaining the result, it shall be the duty of the sheriff to make known by public proclamation the number of votes, the names of the places voted for, and the number of votes for each.

Courts to be held at place selected.

Sec. 6. *And be it further enacted,* That the judges of the circuit and county courts for said county, after the fall term of the circuit court of said county, for the year of our Lord, one thousand eight hundred and forty-one, shall hold their respective courts, at the place so elected, for said county site; and the clerks of the circuit and county courts shall thereafter keep their offices at the said place, or vacate the same; and all writs and process of every nature and kind, returnable to either of said courts at Marshall, shall be properly and lawfully returnable to the place elected, for said county site; any law, to the contrary notwithstanding.

Compensation of sheriff.
Liability.

Sec. 7. *And be it further enacted,* That the said sheriff shall be entitled to such compensation, for holding said elections as the commissioners court of said county may allow to be paid out of the county treasury of said county; and if the said sheriff shall fail or refuse to discharge the duties assigned him by this act, he shall forfeit and pay the sum of one thousand dollars, to be recovered before any court having jurisdiction thereof; one half to the person suing for the same, and the other half to the use of the county.

Separate box.

Sec. 8. *And be it further enacted,* That said sheriff shall cause to be kept a separate box at each precinct, for the purpose of receiving the votes that are given in for said county site, and said sheriff shall hold said election in the same manner, that elections are held for members of the General Assembly, with the exception of the provisions contained in the first section of this act.

Sec. 9. *And be it further enacted,* That all laws and parts of laws contravening the provisions of this act, be, and the same are hereby repealed. Repeal

Approved, December 22, 1840.

[No. 84.] AN ACT

To extend the time for the Collecting of the County, School and Road Tax, in the County of Mobile, for the year, 1840.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the sheriff of Mobile county, be allowed, until the first Monday in February next, to pay into the treasury of said county, all moneys that may be due, or coming due, by reason of the county, school or road tax, of said county, for the year, one thousand eight hundred and forty. Time given.

Sec. 2. *And be it further enacted,* That it shall be lawful for the sheriff of said county, to proceed at any time, before the said first Monday of February next, to make distress and sale for taxes, for the present year in said county, under the same rules and regulations that are now provided by law for the collection of taxes. Sheriff's powers.

Approved, December 31, 1840.

[No. 85.] AN ACT

Changing the name of Caroline Crow and others, and making them heirs of George Pylant, of Lowndes county, and for other purposes.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the name of Caroline Crow, George Jefferson Crow, Henrietta Crow, Isham Milledge Crow, Isabella Crow and Eliza Crow, children of Sarah Crow, deceased, and George Pylant, be, and they are hereby changed to the name of Caroline Pylant, George Jefferson Pylant, Henrietta Pylant, Isham Milledge Pylant, Isabella Pylant and Eliza Pylant, and they are hereby legitimated and made the lawful heirs of said George Pylant, of the county of Lowndes; and capable of inheriting any estate, real or personal, of, through and from said George Pylant, in the same manner, and to the same extent, as if said George Pylant and Sarah Crow, had been lawfully married, and the said children born in lawful wedlock. Name changed.

Sec. 2. *And be it further enacted,* That from and after the passage of this act, the name of James H. Nichols, be, and the same is hereby changed to the name of James A. Alston. Changed.

Approved, January 8, 1841.

[No. 86.] AN ACT

To amend An Act for locating the Seat of Justice of Washington County, and for other purposes.

Preamble.

Whereas, at an election in the county of Washington, on the first Monday in August last, pursuant to "an act entitled an act to locate the seat of justice for Washington county, and for other purposes, approved February third, one thousand eight hundred and forty," Carrollton, now called Barryton, one of the places put in nomination by the sheriff of said county of Washington, according to the directions of said act, received a majority of all the votes given in said county, at said election; and whereas, the votes at said election were not counted by the sheriff in the manner prescribed by said act, in consequence whereof, the commissioners named in said act, have refused to locate the seat of justice at the place so selected at the said election; for remedy whereof,

Commissioners to locate seat of justice.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the said commissioners named in the said act be, and they are hereby authorized and required to locate the seat of justice at Carollton, or within three miles thereof, in the same manner as if the said election had been held and the votes counted strictly in pursuance of the said act; and that they be, and are hereby authorized to do and perform all the duties and acts required of them by the said act, as fully as if the said election had been held and conducted in the manner prescribed in the said act.

Repeal.

Sec. 2. *And be it further enacted,* That all laws and parts of laws, contravening the provisions of this act, be, and the same are hereby repealed.

Approved, January 1, 1841.

[No. 87.] AN ACT

To change the mode of Assessing and Collecting the Taxes for Pike County.

Commissioners to appoint assessors.

Section. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That from and after the passage of this act, it shall be the duty of the judge of the county court, and commissioners of roads and revenue, of Pike county, in each and every year, by the first day of May, to commission some competent person in each captain's beat, in said county, whose duty it shall be to advertise, in the same way and under the same rules and instructions as are now prescribed by law, that he is authorized to assess the taxes of that beat.

List of taxable property.

Sec. 2. *And be it further enacted,* That it shall be the duty of said judge of the county court, respectively, to transmit to each of the persons so commissioned on or by the first day of May, a list of all the property subject to taxation, by the laws of this State:

Proviso.

Provided, always, that white poll shall not exceed fifty cents, and that a black poll shall be one fourth more than a white poll.

Sec. 3. *And be it further enacted,* That if any person or persons should fail to appear and render a true statement of his or her taxable property, the assessor is hereby authorized and required to institute summary process against the property or persons of such delinquent, and make, or cause to be made, a sum double the amount of his or her supposed taxes, together with the cost of suit. On failing to give in tax.

Sec. 4. *And be it further enacted,* That the assessors be, and they are hereby required to make out two separate books of assessments, one of which they shall return to the clerk of the county court, and the other to the tax collector of the county, on or before the first day of July, in each and every year. Duty of assessors.

Sec. 5. *And be it further enacted,* That if any assessor should fail to do his duty, as prescribed in this act, he shall be deemed, and held responsible for the full amount of the taxes, due from his beat: *Provided,* that nothing contained in this act, shall be so construed, as to prevent such delinquent assessor from rendering a legal excuse for such failure. Liability. Proviso.

Sec. 6. *And be it further enacted,* That the tax collector for the county aforesaid, shall consolidate the different assessment books, as returned by the assessors of the several beats, and proceed to collect the taxes so assessed, in the same manner as is now required by law, for which services he shall receive six per cent. upon the amount collected. Duty of collector.

Sec. 7. *And be it further enacted,* That the assessors appointed by the first section of this act, shall receive for their services, four per cent. upon the amount they assess; and the tax collector is authorized to pay the same out of any money that he may have collected, on the warrant of the judge of the county court of said county, authorizing him to do so. Compensation of assessors.

Sec. 8. *And be it further enacted,* That all laws and parts of laws, contravening the provisions of this act, be, and the same are hereby repealed. Repeal.

Approved, November 23, 1840.

[No. 88.]

AN ACT

To repeal an act authorizing the Sheriff of Blount County to serve process issued by Justices of the Peace.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the act authorizing the sheriff of Blount county to serve process issued by justices of the peace, approved the twenty-fourth January, one thousand eight hundred and thirty-nine, be, and the same is hereby repealed.

Approved, December 1, 1840.

[No. 89.]

AN ACT

To authorize the election of Assessor and Tax Collector for the County of Benton.

Election.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That it shall be the duty of the sheriff of the county of Benton, to advertise and cause to be elected, by the qualified electors of said county, at each annual election hereafter to be holden for said county of Benton, to elect an assessor and tax collector, whose duty it shall be, after giving bond, with approved security, to the judge of the county court of Benton, in such sum as the judge may require, not exceeding double the amount of the taxes to be raised in any one year, conditioned for the faithful discharge of his duties, and being duly qualified to assess and collect the taxes for the county aforesaid, in the same manner, and for the same compensation now pointed out and allowed by law to the sheriff for such services.

Collector to give bond.

Repeal.

Sec. 2. *And be it further enacted,* That all laws authorizing, or requiring the sheriff of said county of Benton to assess and collect any taxes that may fall due after the first day of January, one thousand eight hundred and forty-one, be, and the same are hereby repealed.

Approved, November 25, 1840.

[No. 90.]

AN ACT

Regulating Sales by Sheriff of the County of Bibb.

When held.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the sales by the sheriff of Bibb county, now required to be made at Maplesville, shall be, on the second Monday of each and every month, and not on the first Monday, as now provided by law.

Approved, December 18, 1840.

[No. 91.]

AN ACT

To divorce Almond Saunderson from his Wife, Susan Saunderson.

Divorce.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That, in pursuance of a decree of the chancery court, held at Hayneville, in the county of Lowndes, July term, A. D. one thousand eight hundred and forty, the bonds of matrimony heretofore subsisting between Almond Saunderson, and his wife, Susan Saunderson, be, and the same are hereby dissolved and annulled; and that the said Almond Saunderson is hereby divorced from his said wife, Susan Saunderson.

Approved, January 6, 1841.

[No. 92.]

AN ACT

To alter and amend the Laws for assessing and collecting the Taxes in the County of Butler.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That, on the first Monday in March next, and in each and every year thereafter, it shall be the duty of the judge of the county court, and the commissioners of roads and revenue of Butler county, to appoint one of the justices of the peace, in every beat in said county, or some other proper person, who are hereby authorized to administer all necessary oaths, and to assess all property subject to taxation in their respective beats, according to the laws now in force.

Justice of the peace appointed to assess, &c.

Sec. 2. *And be it further enacted,* That it shall be the duty of the judge of the county court, should the commissioners fail to attend at the court house of said county, on the first Monday in March of every year, to proceed to make the aforesaid appointments; and if the judge should not attend, it shall be the duty of the commissioners to make said appointments.

To attend at court house.

Sec. 3. *And be it further enacted,* That it shall be the duty of the persons so appointed, to assess all the property liable to taxation, within the beat for which they may be appointed, with the name of all persons owning such property, or who are liable to taxation, under the existing laws.

Duty of assessors.

Sec. 4. *And be it further enacted,* That the assessor of taxes so appointed, shall, on or before the second Monday in June, in every year, make out a list of all taxable property, in a book for that purpose, together with the names of all persons subject to taxation, with the amount due from each person, and return the same duly certified, to the clerk of the county court of said county, on or before the said second Monday in June.

To make returns.

Sec. 5. *And be it further enacted,* That the persons so appointed, before they enter on the duties of their office, shall give bond and security in the sum of five hundred dollars, conditioned faithfully to discharge the duties of their office, and shall be sworn to discharge the same to the best of their abilities.

To give bond.

Sec. 6. *And be it further enacted,* That, should a vacancy occur by death, resignation, refusal to act, or other cause, the judge of the county court alone, or jointly with the commissioners, may supply said vacancy.

Vacancies.

Sec. 7. *And be it further enacted,* That the said assessors shall receive for their services respectively, four per cent. on the amount assessed; payable out of the county treasury, upon the certificate of the clerk, that the said assessor has made due return of his book of assessments, which certificate shall express the amount of such assessments.

Compensation.

Sec. 8. *And be it further enacted,* That the assessors shall be regulated in making their assessments in the same manner as now

Penalty for failing to give in tax.

required by law; and if any person shall fail to give in their taxable property, he shall be liable to double taxes, to be entered on the book of assessments, estimated to the best of the knowledge of the assessor and collector, accordingly as other taxes; and all persons shall be held bound to render in their taxable property, by the first Monday in June of each year.

Duty of clerk county court.

Compensation.

Sec. 9. *And be it further enacted,* That it shall be the duty of the clerk of the county court of said county, by the first Monday in July, in every year, to consolidate the returns of the assessor, in a book to be prepared for the purpose, and make two copies thereof, one of which he shall hand to the sheriff, and take his receipt for the same, which he shall file in his office; and for these services the clerk shall have a fee of ten dollars, to be paid out of the county treasury, on exhibiting both receipts to the treasurer.

Sheriff to collect taxes.

Sec. 10. *And be it further enacted,* That the sheriff of said county shall proceed to collect the taxes, as assessed, and make due returns of all moneys collected, by the first Monday in November, in each year, and on a settlement with the county treasurer, the said sheriff shall not be allowed for any insolvents, unless first allowed and certified by the judge of the county court, which he shall do, if at all, by the first of November in each year.

Compensation.

Sec. 11. *And be it further enacted,* That the sheriff shall receive for his services, five per cent. upon the amount actually collected and paid over by him.

Penalty for neglect of duties.

Sec. 12. *And be it further enacted,* That, should the clerk of the county court, or any assessor, fail to perform any of the duties herein required of them, they shall forfeit the sum of one hundred dollars, to be recovered on motion in the circuit court of said county, in the name of the treasurer, for the use of the county, upon five days' notice, to such clerk or assessor, of such motion.

Books.

Sec. 13. *And be it further enacted,* That the books of assessments herein required to be made out, shall have the force and effect of an execution, and be collected accordingly.

Repeal.

Sec. 14. *And be it further enacted,* That all laws, or parts of laws, conflicting with the provisions of this act, be, and the same are hereby repealed.

Approved, December 8, 1840.

[No. 93.]

AN ACT

To divorce Lucy Waller from John Waller.

Divorce.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That, in pursuance of a decree of the chancery court held at Jacksonville, in Benton county, the bonds of matrimony heretofore subsisting between Lucy Waller and her husband, John Waller, be, and the same are hereby dissolved; and that said Lucy is hereby divorced of her said husband, John Waller.

Approved, January 8, 1841.

[No. 94.] AN ACT

To amend an Act entitled an Act to ascertain and fix a permanent County Site, for the County of Covington.

Commissioners.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That William Hart, Stephen Cobb, Noah Carroll, John G. Barron, William B. Mitchell, George A. Snowden, and Thomas Lloyd, be, and they are hereby appointed, commissioners for the county of Covington, a majority of whom may act, and whose duty it shall be to select and fix a suitable site, for the permanent location of the court house in said county, having due regard to health, and all other public conveniences, which location shall in no case exceed five miles from the centre of said county.

Duty.

Sec. 2. *And be it further enacted,* That said commissioners shall make said selection previous to the first Monday in June next, one thousand eight hundred and forty-one, and then shall immediately notify the sheriff of said county, in writing, of the selection so made, giving a particular description to the selection so made, as to the new site for said county; and it shall be the duty of the said sheriff to advertise the same at each election precinct in said county, for at least thirty days previous to the next general election thereafter to be holden in said county, which notice shall specify the lot on which the selection is made, and that the removal of the court house will be voted for at said election.

Repeal.

Sec. 3. *And be it further enacted,* That all of the act to ascertain and fix a permanent site for the county of Covington, approved January thirty, one thousand eight hundred and forty, except the first and third sections herein provided for, be, and the same is declared null and void.

Approved, January 8, 1841.

[No. 95.] AN ACT

In relation to Bonds given by the Officers of the Bank of the State of Alabama and its Branches.

Officers to give new bond.

Proviso.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That, hereafter, it shall be the duty of all officers of the Bank of the State of Alabama, and its Branches, who may hereafter be re-elected to any office in said Bank or Branches, to enter into new bond, with good and sufficient security, to be approved of as now prescribed by law in case of their first election; and hereafter no bond taken from any of said officers, shall be held as valid for a longer term of time than twelve calendar months from the date thereof: *Provided,* that nothing herein contained shall discharge the security from any liabilities which he had before that time incurred.

Approved, December 31, 1840.

[No. 96.]

AN ACT

To organize and establish Patrol Laws for the County of Baldwin.

Court to appoint marshal.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the judge of the county court of Baldwin county, and the commissioners of roads and revenue for said county, shall at their regular meetings, on the first Monday in February, in each and every year, after the passage of this act, appoint a marshal of patrol, in each beat in said county, who shall serve under the first appointment, for one year and three months, from the first Monday in February next, and afterwards to serve for the space of one year, estimating the time for three months after their appointment, when they shall enter upon their duties; the marshal appointed, as aforesaid, shall appoint four deputy marshals, within his beat, and divide the slaveholders, and all others liable to do military duty, in each beat, into four equal squads, each to be under the command of a deputy marshal; and the said squads, thus divided, shall do patrol duty, according to the established law, alternate weeks or months, as the marshal shall order and direct.

Deputies.

Who liable to duty.

Sec. 2. *And be it further enacted,* That each and every slaveholder, and all others liable to perform military duty within each beat in said county, shall be liable to serve one year in every three years, either as marshal or deputy marshal; and shall further be liable to an indictment for not serving as such, or for omission of duty, and be fined in a sum not less than twenty-five nor more than fifty dollars, to be assessed by the jury trying the same.

Penalty for neglect.

Sec. 3. *And be it further enacted,* That the persons composing the squads, who shall fail to attend and perform patrol duty, when summoned, either by special or general appointment of the deputy marshal, shall be fined in the sum of two dollars each, to be recovered before any justice of the peace, in and for said county of Baldwin, at the suit of the marshal of the beat, in which the delinquency may occur.

Duty of clerk.

Sec. 4. *And be it further enacted,* That it shall be the duty of the marshal to make out a report, and transmit the same to the clerk of the circuit court, to be held next after his appointment, the names of the deputy marshals in his beat, and the number of men belonging to each squad; and it shall his duty to notify the deputy marshals of their appointments, and the names of the men composing their squads, together with the directions in what order each squad is to serve, which notice shall be in writing; and it shall furthermore, be the duty of the marshal of each beat to report all delinquencies of deputy marshals to each session of the circuit court to be held in and for the county of Baldwin.

Reports.

Sec. 5. *And be it further enacted,* That it shall be the duty of the clerk of the circuit court, to lay before the grand jury, at each and every court, the reports of the different marshals appointed under this act; and it shall be the duty of the presiding judge to give this act in charge to the grand jury.

Sec. 6. *And be it further enacted,* That the deputy marshals shall do and perform patrol duty according to the law, under the directions of the marshals, and the deputy marshals shall report to the marshal of their respective beats, all delinquencies of their men. Duty of deputy.

Sec. 7. *And be it further enacted,* That all fines collecting under this act, shall be deposited in the county treasury of Baldwin county, for the use of said county. Fines.

Sec. 8. *And be it further enacted,* That all laws and parts of laws contrary to the provisions of this act, be, and they are hereby repealed, as to the county of Baldwin. Repeal.

Approved, January 1, 1841.

[No. 97.]

AN ACT

To change the time of holding the County Court of the County of Tallapoosa.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, the county court for the county of Tallapoosa, shall be held on the first Mondays in May and November, in each and every year. Time changed.

Sec. 2. *And be it further enacted,* That all laws or parts of laws contravening the provisions of this act, be, and the same are hereby repealed.

[No. 98.]

AN ACT

More permanently to locate the Seat of Justice for the County of Monroe.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, the seat of justice for the county of Monroe, shall be and remain at Monroeville, until otherwise directed by law; any law to the contrary, notwithstanding.

Approved, December 15, 1840.

[No. 99.]

AN ACT

For the relief of Louisa Stewart, of Randolph County.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, it shall be lawful for Louisa Stewart, of the county of Randolph, to receive and hold, by purchase, gift or inheritance, any property, real or personal, free from the hinderance, control or authority of her husband Robert M. Stewart, and the same to dispose of by will, gift or sale, in the same manner as if she was a *feme sole.*

Approved, November 23, 1840.

[No. 100.] AN ACT

To appoint a Committee of Finance in the County of Pike, and for other purposes.

Committee. Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That Richard T. Johnson, James M. Thompson, and Nubal A. Moore, be, and they are hereby appointed a committee of finance in and for said county, whose duty it shall be to examine, audit, and settle the accounts of the county treasurer, clerk of the circuit court, sheriff, tax collectors, and judge and clerk of the county court in said county.

Duties. Sec. 2. *And be it further enacted,* That it shall be the duty of the said committee of finance, to meet on the first Monday in April, or as early as convenient thereafter, in each and every year at their respective court houses, and continue from day to day until they have gone through a fair examination of all the books, papers and accounts appertaining to the said offices herein named; and the said committee of finance shall have power to send for persons and papers.

Penalty. Sec. 3. *And be it further enacted,* That should the said officers or any one of them refuse to render up, when required to do so, by said committee, all the books, papers and accounts relative to their offices, to be examined by said committee, they shall be fined in a sum not less than five hundred dollars; to be levied and collected as other fines in such cases, and applied to county purposes.

Oath. Sec. 4. *And be it further enacted,* That the said committee of finance shall before entering upon the discharge of their duties, take and subscribe the following oath, before some justice of the peace or judge of the county court: "that, I do solemnly swear, that I will truly examine and report to the judge of the county court and commissioners of roads and revenue, without favor or affection, the condition of all officers, according to this act. So help me God."

Fraud. Sec. 5. *And be it further enacted,* That should said committee on examination, discover that the said officers, or either of them, have committed any fraud, or used the county funds in any way not prescribed by law, then in that case the judge of the county court shall bring suit against them or either of them, and their securities, and collect all such sums as they have fraudulently used, with interest, together with all damages thereon; and shall, moreover, be subject to a fine of not less than one hundred dollars.

Compensation. Sec. 6. *And be it further enacted,* That said committee of finance, shall receive for their services, for each day they may be employed in making and reporting said examination, three dollars per day; to be paid out of any money in the county treasury of said county.

To report. Sec. 7. *And be it further enacted,* That said committee shall make their report on or before the first day of June, in each and every year.

Sec. 8. *And be it further enacted,* That all witnesses summoned by said committee of finance shall be bound to attend, as though summoned by any court of justice, and shall receive the same compensation as witnesses summoned to the circuit courts; and the certificate of said committee of finance, shall be a sufficient authority for the county treasurer of said county to pay the amount certified to be due, out of any money in the county treasury, not otherwise appropriated. Witnesses.

Sec. 9. *And be it further enacted,* That whenever any vacancy occurs in said finance committee, the judge of the county court and commissioners of roads and revenue, shall fill said vacancy. Vacancies.

Approved, December 1, 1840.

[No. 101.]

AN ACT

For the relief of Cintha Anderson.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, it shall be lawful for Cintha Anderson, of the county of Jackson, to take, receive and hold, by purchase, gift, or inheritance, any property, either real or personal, free from the hinderance, molestation, control, or authority of her husband Hamilton Anderson, and the same to dispose of by will, gift, or sale, in the same manner as if she were a *feme sole: Provided,* the provisions of this act shall apply only to such property as she shall acquire by her own exertions, or from other persons than her husband, and shall not operate to the prejudice of existing creditors, as to property heretofore acquired. Powers given.

Approved, January 8, 1841.

[No. 102.]

AN ACT

To change the name of Waid Webb, and for other purposes.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the name of Waid Webb, of the county of Sumter, in this State, be changed to Waid Ritter, and that he be, and shall hereafter be considered the legal heir and representative of John Ritter, of the county aforesaid; and shall be able and capable in law, to inherit all the estate of the said John Ritter, in the manner and form, in which he would inherit, if he was his lawfully begotten child. Name changed.

Approved, January 9, 1841.

[No. 103.] AN ACT

To divorce William G. Haun from his wife Catharine Haun.

Divorce.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the bonds of matrimony heretofore solemnized and subsisting, between William G. Haun and Catharine Haun, his wife, be and the same are hereby annulled and dissolved; and that the said William G. Haun, in pursuance of a decree of the chancery court, holden at Mobile, made at the fall term of said court, A. D. one thousand eight hundred and forty, the said William G. Haun is hereby divorced from his wife Catharine Haun.

Approved, January 1, 1841.

[No. 104.] AN ACT

To levy a Special Tax for the County of Morgan.

To levy tax.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the judge of the county court and commissioners of roads and revenue for the county of Morgan, at the February term of the commissioner's court, in the year eighteen hundred and forty-one, be, and they are hereby authorized to levy a special tax on the persons and property of the citizens of said county, not exceeding one hundred per cent. on the amount of the county tax for the year eighteen hundred and forty, for the purpose of enabling the county to discharge its liabilities.

Compensation.

Sec. 2. *And be it further enacted,* That the assessor and tax collector of said county, shall be allowed the same compensation for the collection of the same, as is now authorized by law.

Approved, January 9, 1841.

[No. 105.] AN ACT

Authorizing the Judge of the County Court and Commissioners of Roads and Revenue to assess and collect a tax to defray county claims in the County of Randolph.

To levy tax.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the judge of the county court and commissioners of roads and revenue for the county of Randolph, are hereby authorized to levy and have assessed, and collected in said county, a tax annually, which they may deem sufficient to discharge the claims against said county.

Sec. 2. *And be it further enacted,* That all laws and parts of laws contravening the provisions of this act, be, and the same are hereby repealed.

Approved, November 25, 1840.

[No. 106.] AN ACT

For the relief of Mary Howell.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That Mary Howell, wife of Samuel Howell, of the county of Dallas, shall possess all the rights and privileges, and be subject to all the liabilities of a *feme sole;* that any property she, said Mary Howell, owns or may acquire by inheritance or other lawful means, shall not be sold on account of the debts of said Samuel Howell, her husband, or be taken by him in any manner whatever; and the said Mary Howell shall have power and authority to sell and dispose of any property that she has, or may become possessed of, as though she had never been married to the said Samuel Howell: *Provided,* the property, estate and effects of the said Samuel Howell shall, in all cases, be subject to the claims of his existing creditors.

Privileges.

Proviso.

Approved, December 21, 1840.

[No. 107.] AN ACT

For the relief of Thomas S. Bibb, of Lawrence County.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That Thomas S. Bibb has authority to take and use earth, for the purpose of improving and repairing his turnpike or raised way in Lawrence county; extending from Coxe's ferry, on the south side of the Tennessee river, across the swamp to the mouth of Paul J. Watkins' line, on either side of said way, not exceeding thirty feet from the centre thereof: *Provided,* that said Bibb shall pay to any person aggrieved thereby, damages assessed on the same mode now provided by law for the opening of roads.

Privileges.

Approved, December 8, 1840.

No. 108.] AN ACT

To change the name of William Tell Dean, and for other purposes.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, the name of Wil-am Tell Dean, of the county of Baldwin, be, and the same is ereby changed to that of William Tell Brantly.

Name changed.

Sec. 2. *And be it further enacted,* That the said William Tell ean, be, and he is hereby made the legal heir of Elizabeth Brant- of the county of Baldwin, and that he be entitled to all the rights nd privileges, and be capable of taking by inheritance or otherwise, any property, real or personal, which may descend to him s such.

Approved, January 1, 1841.

[No. 109.]

AN ACT

To divorce Caroline Butts from her Husband, George W. Butts.

Divorce.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That, in conformity with a decree of the chancery court, holden at Columbiana, Shelby county, on the twenty-fourth day of October, A. D. one thousand eight hundred and forty, the bonds of matrimony, heretofore subsisting between Caroline Butts, and her husband, George W. Butts, be, and the same are hereby dissolved, and annulled; and the said Caroline Butts is hereby divorced from her husband, George W. Butts, and restored to all the rights and privileges of an unmarried woman.

Approved, December 2, 1840.

[No. 110.]

AN ACT

For the relief of Sarah A. Harris.

Privileges.

Proviso.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That, from and after the passage of this act, it shall be lawful for Sarah A. Harris, of the county of Talladega, to take, receive, and hold, by purchase, gift, or inheritance, any property, either real or personal, free from the hinderance, molestation, or authority, of her husband, James S. Harris, and the same to dispose of by will, gift or sale, in the same manner as a *feme sole: Provided,* the provisions of this act shall apply only to such property as she shall acquire by her own exertions, or, from other persons than her husband; and shall not operate to the prejudice of existing creditors, as to property heretofore acquired.

Approved, January 6, 1841.

[No. 111.]

AN ACT

To divorce Herod Seale from his Wife, Sarah Seale.

Divorce.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That, in conformity with the decree of the chancery court, held at Columbiana, Shelby county, on the twenty-fifth day of February, A. D. one thousand eight hundred and forty, the bonds of matrimony, heretofore subsisting between Herod Seale, and his wife, Sarah Seale, be, and the same are hereby dissolved, and annulled; and the said Herod Seale is hereby divorced from his wife, Sarah Seale, and that Herod Seale henceforth be entitled to all the privileges of an unmarried man.

Approved, November 20, 1840

[No. 112.] **AN ACT**

For the support of Paupers, in the County of Benton.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly, convened,* That the judge of the county court and the commissioners of roads and revenue, for the county of Benton, be, and they are hereby authorized, whenever they or a majority of them, shall deem it necessary, to purchase and receive title to any quantity of land, (within fifteen miles of Jacksonville) not exceeding one quarter of a section, which title shall be made to the judge of the county court of Benton county, and his successors in office, and shall vest in, and be the property of Benton county.

To purchase land.

Sec. 2. *And be it further enacted,* That said judge and commissioners are hereby authorized to contract for the building of all necessary houses for the purposes therein mentioned, and every thing else that is necessary to be done; the expenses of which shall be paid out of the county treasury of Benton county.

Contract for buildings.

Sec. 3. *And be it further enacted,* That whenever it shall appear to the court of commissioners of roads and revenue of Benton county, that any person is a subject of public charity and support, he, she or they, so soon as there be a poor house in said county, may be ordered by said court, to be conveyed to the said poor house, to be taken care of and supported; and said court is authorized to employ some suitable person to superintend and take care of all the poor of said county of Benton.

Admission of paupers.

Sec. 4. *And be it further enacted,* That it shall be the duty of the judge of the county court and commissioners of roads and revenue, or a majority of them, to meet at the poor house of their county, at least once in every three months, and examine the situation of the house, and the furniture, the paupers, and their treatment; and the said court shall, in all cases, have power to dismiss any person from the care and the charge of the poor house, at the pleasure of said court, and to make all such rules and regulations as to the said court shall seem necessary and advisable, with due regard to economy, and the comfort of the poor.

Quarterly examination.

Sec. 5. *And be it further enacted,* That at the first court of commissioners of roads and revenue after a poor house shall have been built in Benton county, the said court shall appoint one person in each captain's beat, to act as an overseer of the poor, whose duty it shall be to report to each term of the commissioners' court, what person or persons are within his beat, properly the subject of charity and public support; and the said court shall inquire into the facts of the case of each reported, and order them to be conveyed to the poor house, or make such other order (if the court should determine against such report) as said court shall deem proper and expedient; and the said overseers so appointed shall continue in office one year, and said court shall at each regular

Overseers to be appointed.

Duty.

term thereof, fill all vacancies occasioned by death, resignation, removal, or expiration of term of service, or otherwise.

Superintendant's bond.

Sec. 6. *And be it further enacted,* That before any person who may be employed by the commissioners' court of roads and revenue, to superintend the poor house of Benton county, shall enter upon the discharge of his duty, he shall enter into bond with two or more good securities, payable to the judge of the county court of said county, and his successors in office, to be approved of by said judge, conditioned for the faithful discharge of his duty; said bond to be in such penalty as the said court may direct, and shall not be void on the first recovery, but may be sued on as often as the judge and commissioners shall be of opinion that the conditions have been violated; and the judge and commissioners shall have power to make such rules and regulations for the support of the poor at the poor house, as to them may seem to comport with the interest of the county, and the health and comfort of the poor.

Powers.

Repeal.

Sec. 7. *And be it further enacted,* That all laws and parts of laws contravening the provisions of this act be, and the same are hereby repealed.

Approved, December 1, 1840.

[No. 113.]

AN ACT

To raise a Fund for the payment of Jurors for the County of Pike.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, it shall be the duty of the clerk of the circuit court, and the clerk of the county court of the county of Pike, for each and every judgment, obtained in their respective courts, to demand and receive from the plaintiff, or his or her attorney, the sum of four dollars, as tax fee, to be added and become a part of the county fund of said county.

Duty of clerk.

Sec. 2. *And be it further enacted,* That no judgment shall be valid, that may be obtained, either in the circuit or county court, unless the sum of four dollars, as a tax fee, as aforesaid, shall have first been paid at the rendition of said judgment.

Judgment.

Sec. 3. *And be it further enacted,* That for each and every civil suit that may be commenced, or suits of a criminal nature, which may be prosecuted to judgment, the sum of four dollars shall be assessed and be added in a bill of cost, and be collected by the sheriff of said county, and paid over to the treasurer, and become a part of the county fund of said county.

Tax on suits.

Sec. 4. *And be it further enacted,* That all sums of money so collected, by the clerk of the circuit court, or clerk of the county court, or sheriff of said county, as aforesaid, under the provisions

Fees.

of this act, shall be paid over to the county treasurer, and become a part of the county fund of said county, to be applied to the payment of jurors of said county.

Sec. 5. *And be it further enacted,* That all persons obtaining a certificate from the clerk of the circuit or county court, certifying the amount due for services as jurors, in their respective courts, shall, on presenting the same to the treasurer of said county, receive payment out of any moneys in the treasury not otherwise appropriated.

Jury certificates to be paid.

Sec. 6. *And be it further enacted,* That all laws or parts of laws, militating against this act, be, and the same are hereby repealed.

Repeal.

Approved, December 21, 1840.

[No. 114.]

AN ACT

Making Appropriations for the payment of Claims against the State.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the Comptroller of Public Accounts be, and he is hereby required to issue his warrants upon the Treasurer in favor of the following persons, for the amounts hereafter to be specified, to be paid out of any money in the treasury not otherwise appropriated, viz: in favor of T. P. Simmons, jailer of Lowndes county, for victualing prisoners, &c., the sum of two hundred and twenty-four dollars and thirty cents; to Jacob Hoss, jailer of Cherokee county, for like services, the sum of one hundred and eighty-five dollars, for like services; to William Miller, jailer of Talladega county, the sum of fourteen dollars, for like services; to Nicholas Alley, jailer of Fayette county, the sum of thirty dollars and eighty cents, for like services; to William Magee, sheriff and jailer of Mobile county, the sum of two thousand five hundred and twenty-nine dollars and twenty cents, for like services; to Allen Ray, jailer of Autauga county, the sum of forty-three dollars and twenty cents, for like services; to James Savage, jailer of Clarke county, the sum of forty-eight dollars and eighty cents, for like services; to Richard W. Barber, jailer of Tuscaloosa county, the sum of one hundred and fifty-three dollars and twenty cents, for like servicss; to Duncan M. Rae, sheriff and jailer of Barbour county, the sum of four hundred and thirty-eight dollars and forty cents, for like services; to Samuel Stephens, jailer of Franklin county, the sum of two hundred and twenty-eight dollars and eighty cents, for like services; to Young Mann, sheriff of Henry county, the sum of seventy-three dollars and ninety-five cents, for conveying prisoners under a change of venue; to Hernson F. Bezzell, deputy sheriff of Barbour county, the sum of nineteen dollars, for expenses incurred and services rendered in conveying prisoners to jail, &c.; to Hiram

Appropriations.
T P Simmons
Jacob Hoss.
Wm Miller.
N Alley.
Wm Magee.
Allen Ray.
Jas Savage.
R W Barber.
D McRae.
S Stephens.
Y Man.
H F Bizzell.

H Raiborn. Raiborn, jailer of Wilcox county, the sum of seventy-five dollars
Jacob Hoot. and twenty cents, for feeding prisoners in jail, &c.; to Jacob Hoot,
jailer of Dallas county, the sum of one hundred and sixty-five
D H Valliant. dollars and fifty cents, for like services; to D. H. Valliant, sheriff
and jailer of Lawrence county, the sum of three hundred and
twenty-eight dollars and forty cents, for like services; to H. D.
H D Morrow. Morrow, sheriff and jailer of Morgan county, the sum of fifty-one
A Sample. dollars and twenty cents, for like services; to A. Sample, sheriff
of Autauga county, the sum of sixty-four dollars, for executing
three condemned persons, attending on courts in vacations with
said prisoners, and expenses of keeping said prisoners in jail, &c.

Sec. 2. *And be it further enacted*, That the following sums
be, and are hereby appropriated, out of any money in the treasury
not otherwise appropriated, to the following purposes, to wit: to
W McConnell William McConnell, of Clarke county, the sum of three hundred
and one dollars and sixty-two and a half cents, for expenses incurred for following and apprehending L. R. Johnson, charged
V Williams. with horse stealing; to Vincent Williams, of Mobile county, the
sum of one hundred dollars, for expenses incurred for apprehending and bringing to justice, Benjamin James, charged with horse
Jas Murry. stealing; to James Murry of Tallapoosa county, the sum of four
hundred dollars, being half the value of a slave executed according
R Whiting. to law; to Richard Whiting, the sum of forty-eight dollars, for
services rendered in attending on joint examining committee of both
branches of the Legislature, appointed to examine the State Bank
H C Lea. of Alabama; to Henry C. Lea, of Perry county, the sum of forty
dollars, for services rendered, and prosecuting four slaves charged
J P Graham. with murder; to John P. Graham, the sum of ten dollars, for services rendered, and prosecuting one slave charged with murder;
Wm F Pierce to William F. Pierce, of Greene county, the sum of thirty dollars,
for services rendered, and prosecuting three slaves charged with
Thos Wilson. grand larceny; to Thomas Wilson, of Jackson county, the sum of
eighty-seven dollars and twenty-five cents, being the necessary
expenses incurred in the burial of the late George R. Griffin, Esq., a
Chas Lewen. member from Jackson county; to Charles Lewen, the sum of one
hundred dollars, being the balance of rent of house as arsenal, for
the year one thousand eight hundred and thirty-nine; to E. A.
E A Hooper. Hooper, of Benton county, the sum of four hundred and thirty-seven dollars and fifty cents, for services rendered and cash expended in collecting the public arms, &c., under the appointment of
J N Hayden. the Governor; to James N. Hayden, of Benton county, the sum of
twelve dollars and seventy-five cents, for services rendered in
cleaning pistols and swords, the property of the State of Alabama;
A R Thomas. to Armsted R. Thomas, the sum of eight dollars, for wood furnish-
Wm M Lacy. ed the Secretary of State; to William M. Lacy, the sum of fifteen
dollars and thirteen cents, for articles furnished the State, by order
A R Thomas. of doorkeeper of the Senate; to A. R. Thomas, the sum of two
hundred dollars, for services rendered in taking care of the Capitol
Jos T Cook. and the furniture thereto belonging; to Joseph T. Cook, sheriff of

Franklin county, the sum of twelve dollars and sixty cents, for removing James M. Mitchell from the jail of Franklin county to the jail of Lawrence county, on a change of venue; to Anderson Bean, late sheriff of Franklin county, for taking John Lusk, a State prisoner, from the county of Franklin to the county of Morgan, by order of the court, the sum of twenty-one dollars.

A Bean.

Sec. 3. *And be it further enacted,* That the sum of six dollars be, and the same is hereby appropriated to Anderson Bean, late sheriff of Franklin county, for making congressional returns to the town of Moulton, in the year one thousand eight hundred and thirty-nine; to Isaac N. Campbell, sheriff of Dallas county, the sum of eighteen dollars, for making congressional returns for the year one thousand eight hundred and thirty-nine, from said county to Clarke county; to Thomas O. Holloway, sheriff of Dallas county, the sum of eighteen dollars, for making returns of the presidential election for A. D. one thousand eight hundred and forty; to Raza H. Roe, sheriff of Fayette county, the sum of nine dollars and twenty-five cents, for similar services; to Samuel P. Wallace, sheriff of Autauga county, the sum of eighteen dollars and twenty-five cents, for similar services; to Joseph Black, returning officer of Washington county, the sum of forty-two dollars and fifty cents, for similar services; to William G. Godbold, sheriff of Monroe county, the sum of thirty dollars and twenty-five cents, for similar services; to Alexander Riddle, returning officer of Jackson county, the sum of forty-two dollars and fifty cents, for similar services; to Leven Skipper, sheriff of Dale county, the sum of forty-eight dollars and seventy-five cents, for similar services; to Josiah Jones, returning officer of Covington county, the sum of forty-two dollars and fifty cents, for like services; to William McConnell, returning officer of Clarke county, the sum of forty-five dollars and twenty-five cents, for like services; to John McRae, deputy sheriff of Barbour county, the sum of forty-two dollars and seventy-five cents, for like services; to Young Mann, sheriff of Henry county, the sum of forty-two dollars and seventy-five cents, for like services; to Thompson Moye, sheriff of Conecuh county, the sum of thirty-three dollars and twenty-five cents, for like services; to Edward T. Broughton, sheriff of Monroe county, the sum of nine dollars and seventy-five cents, for like services; to James C. Lock, sheriff of Greene county, the sum of twenty dollars, for like services; to Alfred Harrison, sheriff of Lowndes county, the sum of twenty-one dollars and fifty cents, for like services; William H. Millwee, administrator of the estate of David Ballew, late sheriff of Morgan county, deceased, the sum of thirty-three dollars, for making congressional returns by his special deputy, H. D. Morrow, for the year one thousand eight hundred and thirty-nine; all of which above named sums to be paid out of any money in the treasury not otherwise appropriated.

A Bean.
INCampbe
T OHolloway
R H Poe.
S P Wallace.
Jos Black.
W G Godbold
A Riddle.
L Skipper.
Josiah Jones.
WMcConnel
John McRae
Y Mann.
T Moye.
ETBroughton
J C Lock.
A Harrison.
WH Millwee

Sec. 4. *And be it further enacted,* That the Comptroller of Public Accounts shall issue his warrant on the State Treasurer, in

John Tatom. favor of John Tatom, for the sum of one hundred and fifty-one
dollars, for servant hire, hauling water, cleaning lamps, and for
putting the representative hall in order for the session of the legislature,
all of which services were rendered during the present session,
to be paid out of any money in the treasury not otherwise
Proviso. appropriated: *Provided*, that James H. Owen shall receive the
Jas H Owen. sum of two hundred dollars, for taking care of the Capitol and the
public grounds, for the year one thousand eight hundred and forty-one;
and if the said Owen should neglect his duty, the Governor
shall have the power of removing him and appointing another.

Approved, January 8, 1841.

[No. 115.] AN ACT

Making Appropriations for the payment of certain Claims against the State.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,*
That the State Treasurer be required to pay the following sums
of money, out of any money in the treasury not otherwise appro-
A Lynch priated: To Augustus Lynch, the sum of twenty-eight dollars and
thirty-one and a quarter cents, for sundry repairs done about the
G & C Hopkins Capitol, fixing desks, &c.; to G. & C. Hopkins, the sum of seventy-five
dollars and ninety-four cents, for black crape, muslin, cambrick,
&c., furnished for the use of the members; to Hogan & Ly-
Hogan & Lyon on, the sum of fifty-six dollars and ninety cents, for articles purchased
by the doorkeeper for the use of the State, consisting of various
M Kelly articles; to M. Kelly, sheriff of Jefferson county, eighteen dollars,
for making return of presidential election.

Sec. 2. *And be it further enacted*, That the sum of ten dollars
B Patterson be paid to Benjamin Patterson, for two days services in the Branch
of the Bank of the State of Alabama, at Huntsville, as director of
A Finley said Branch Bank; to Alva Finlay, the sum of ten dollars, for two
S S Ewing days services in said bank; to Stephen S. Ewing, the sum of three
hundred and thirty-five dollars, for sixty-seven days of similar ser-
J J Fackler vices; to John J. Fackler, the sum of three hundred and fifteen
J Phelan dollars, for sixty-three days of like services; to John Phelan, the
sum of three hundred dollars, for sixty days of like services; to
J J Fletcher John J. Fletcher, the sum of one hundred and ninety-five dollars,
for thirty-nine days like services; to William A. Austin, the sum
W A Austin of seventy dollars, for fourteen days like services.

Sec. 3. *And be it further enacted*, That the sum of thirteen
Jos Black dollars and twenty cents be paid to Joseph Black, jailer of Washington
county, for victualing State prisoners, &c.; to George S.
G S Houston Houston, the sum of ten dollars, for prosecuting a slave charged
T M Danier with murder to conviction; to Thomas M. Danier, the sum of
sixty-one dollars and fifty cents, for three hundred and seven

pounds of bacon, purchased for the use of Captain Justice's company
of mounted volunteers, of Dale county; to William Braly, W Braly
sheriff of Tuscaloosa county, the sum of thirty-eight dollars and
twenty-five cents, for expenses for travelling to and from Greene
county jail with State prisoners, furnishing guard, &c.; to J. Lacy J Lacy & Co.
& Co., the sum of ninety dollars and sixty-two and a half cents,
for record book, minute book, and stationery, furnished the clerk
of the supreme court, &c., and furnishing record book and stationery
for the use of House of Representatives; to Morrison & Little, Morrison & Little
the sum of nineteen dollars and eighty-seven cents, for ten gallons
of lamp oil, spirits of turpentine, &c.; to James H. Owen, the sum J H Owen
of twelve dollars, for attending to the delivering and measuring
coal for the use of the State; to James & P. Quarles, the sum of J &P Quarles
nine dollars, for repairing lamps, &c.; to Hardin Perkins, the sum H Perkins
of forty-two dollars and seventy-eight cents, for blacksmith work
done in repairing grate, making fenders, fixing fire shovels, &c.;
to James C. Lock, sheriff of Greene county, the sum of one hundred J C Lock
and forty dollars and forty cents, for victualing sundry State
prisoners and removing the same, &c.; to David Spoor, the sum of D Spoor
eighty dollars, for services rendered a sick man who was a soldier
in the army; to T. W. Huey & Co., one hundred and seventy-one T W Huey & Co
dollars and twenty-five cents, for books and stationery furnished
the chancery court of Talladega.

Sec. 4. *And be it further enacted,* That the sum of fifteen
dollars be allowed to William S. Taylor, for collecting up the stationery W S Taylor
and other articles belonging to the Senate chamber, and
taking an inventory for the same according to law, and that the
further sum of one hundred and twenty-five dollars and seventy-five
cents be allowed said Taylor, for servant hire for the use of W S Taylor
the present General Assembly, and for boarding said servants, to
be paid out of any money in the treasury not otherwise appropriated,
and the Comptroller of Public Accounts will issue his warrant
on the Treasurer for the same.

Approved, January 0, 1841.

[No. 116.] AN ACT

Making appropriations for the payment of certain claims against the State.

Section 1. *Be it enacted by the Senate and House of Representatives
of the State of Alabama, in General Assembly convened,*
That the following sums, be, and the same are hereby appropriated
to pay the persons hereinafter named, to be paid out of any
money in the Treasury not otherwise appropriated, to wit: To
Moses Carmack the sum of twenty-two dollars, for distributing M Carmack
weights and measures for the county of Walker; to David A. Griffin, D A Griffin
sheriff of Talladega county the sum of thirty-nine dollars, for
making the return of the Congressional vote of said county, in

T Forsythe 1839, and the Presidential election of 1840; to Tolford Forsythe,
jailer of Wilcox county, the sum of two hundred and thirty dollars
and twenty cents, for victualing and keeping sundry prisoners
committed to his charge as jailer of said county; to E. Y.
E Y Fair Fair, the sum of twenty dollars, for prosecuting under the appointment
of the court, slaves, Ned and David, under a charge of burglary
W Miller in the county of Montgomery; to William Miller, jailer of
Talladega county, the sum of twenty-seven dollars for keeping
and victualing sundry persons committed to said jail in 1840; to
R Nelson Robert Nelson, editor of the Alabama Journal, the sum of twenty-one
dollars, for thirteen insertions of an act to suppress the evil
M T Ellis practice of carrying concealed weapons; to M. T. Ellis, for carrying
congressional vote from Dadeville to Montgomery, and comparing
the same in 1839, the sum of fifteen dollars and fifty cents; to Paul
P Robbins Robbins, sheriff of Limestone county, the sum of twenty-seven dollars
sixty-two and a half cents, for conveying Mark Thornton,
prisoner, from Limestone to Madison county, under the direction
of the judge of the circuit court of said Limestone county; to William
W J Campbell J. Campbell, sheriff of Coosa county, the sum of twenty-four
dollars and eighty-five cents, for services rendered the State, and
the further sum of fifteen dollars for making a return of the presidential
P M Bush election; to P. M Bush, late sheriff of Marshall county,
the sum of two hundred and sixty-one dollars and forty-nine cents,
for services rendered the State and moneys expended in behalf
thereof during the years, 1836 and 1837, as per amount stated; to
H Pullen, &c Henry Pullen, Wm. R. Burfoot, Hobson Watts, and James Weaver
the sum of two hundred and forty dollars, for apprehending
J H Cruddock Garland Henchie, charged with negro stealing; to John H. Cruddock,
the sum of twenty-five dollars, for conveying negro Daniel,
J Womack to Macon county jail; to Jesse Womack, sheriff of Sumter county,
the sum of two hundred and nineteen dollars and seventy-five
cents, for victualing sundry prisoners, committed to the jail of
S D Cabiness said county, as per account stated; to S. D. Cabiness, register of
the chancery court at Huntsville, the sum of sixteen dollars for
J G Graham articles purchased for the use of said court; to James G. Graham,
& Co Charles T. Howell and Henderson H. Williams, the sum of one
hundred and eighty dollars, for apprehending Richard Johnson,
H G Donoho charged with horse stealing; to H. G. Donoho, the sum of ten dollars
for repairs done on privy at the State Capitol; to Matthias E.
M E Gary Gary, sheriff of Sumter county, the sum of one hundred and thirty-nine
dollars and sixty-five cents, for victualing sundry individuals
H T Scott committed to the jail of said county; to Henry T. Scott, jailer
of Jackson county, for keeping a State prisoner charged with larceny,
the sum of seventeen dollars and sixty cents; to Captain
H G Jenkins H. G. Jenkins, for money expended for foraging seventeen horses
under his command by order of Gen. Wm. Wellborn, for conveying
twelve Indian persons, &c., the sum of thirty-three dollars; to
W R Hunt W. R. Hunt, jailer of Madison county, for keeping and victualing
sundry prisoners in said jail, the sum of six hundred and

eleven dollars and seventy five cents; to William Robinson, sher- W Robinson
iff of Madison county, for making return of Presidential election
and comparing the polls, the sum of thirty-six dollars; to William
Braly, sheriff of Tuscaloosa county, for services rendered in at- W Braly
tending on the settings of the supreme court, &c., the sum of one
hundred and twenty dollars; to John M. Cooper, for services as J M Cooper
special sergeant at arms in summoning witnesses to attend the se-
lect committee to examine into the claims of said John M. Cooper
and for other purposes, thirty-seven dollars; to James G. Malone, J G Malone
for his attendance as witness before said committee and mileage,
forty-two dollars; to Ard Welton, for his attendance as witness be- A Welton
fore said committee and mileage, twenty-four dollars; to John
James, for his attendance as witness before said committee J James
and mileage, forty-one dollars; to Reuben Chamberlaine, for R Chamber-
his attendance as witness before said committee and milage, lain
forty-eight dollars; to John G. Creagh for his attendance as J G Creagh
witness before said committee and mileage, forty-four dollars;
to George W. Little, for his attendance as witness before said G W Little
committee and mileage, thirty-seven dollars; to William Jordon, W Jordon
for his attendance as witness before said committee and mileage,
forty-four dollars; to Eli S. Thornton, for his attendance as witness E S Thornton
before said committee and mileage, forty dollars; to James Thomp- J Thompson
son for his services as clerk to the said committee, fifty-two dol-
lars.

Approved, January 7, 1841.

[No. 117.] AN ACT

To provide for the Payment of Certain Claims against the State.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,*
That the following sums of money be, and the same are hereby
appropriated, to be paid out of the public treasury, out of any
money in the treasury not otherwise appropriated, to wit: to the Estate of A
legal representatives of Alston H. Carpenter, five hundred dollars, H Carpenter
the half value of a negro man slave, executed in the county of
Montgomery; to A. Sloan, sheriff of Shelby county, eleven dol- A Sloan
lars and ninety cents, for jail fees, &c.; to Samuel P. Bascom, the S P Bascom
sum of twenty dollars, for services rendered as an attorney at law;
to Dixon Hestle, eighty-two dollars and thirty cents, for two ac- D Hestle
counts presented by him for jail fees and victualing prisoners; to
John O. Walker, four dollars and fifty cents, for victualing two J O Walker
negro slaves, State prisoners; to Asa Parker, the sum of seventy- A Parker
two dollars and fifty cents, for victualing two negro slaves in
Monroe county jail; to Patrick N. Madigan, the sum of twenty- P N Madigan
three dollars and twenty cents, for jail fees, in the county of Mont-
gomery; to F. Snow, the sum of two hundred and two dollars, F Snow

J Jackson for jail fees in the county of Benton; to J. Jackson, the sum of
fourteen hundred dollars, being half the valuation of three negro
Jos Wiley slaves, who were executed; to Joseph Wiley, the sum of five hundred
and fifty-four dollars and sixteen and one fourth cents, half
the valuation of a negro man slave, by the name of Harry, who
was executed, and was the property of the said Joseph Wiley;
W L Hampton to Wade L. Hampton, the sum of twenty-four dollars, for victualing
A Wallace Absalom Looney, a State prisoner; to Asa Wallis, the sum
of one hundred and seventy-three dollars and thirty cents, for coal
W P Pettus furnished at the State capitol; to Winston P. Pettus, sheriff of
Lauderdale county, the sum of nine dollars and twenty-five cents,
W Johnson for making congressional returns; to William Johnson, sheriff of
Sumter, the sum of one hundred and thirty-five dollars, for jail
J Odell fees; to James Odell, the sum of two hundred and forty-three
J Atkins dollars and fifteen cents, for jail fees; to John Atkins, sixty-three
T Alford dollars for jail fees; to Thomas Alford, the sum of one
hundred and ninety-eight dollars and eighty cents, for two accounts,
for victualing State prisoners, and other services in the
W J Ellis county of St. Clair; to Walter J. Ellis, the sum thirty-five dollars
and sixty cents, for keeping and victualing prisoners, &c.; to
J W Hill James W. Hill, thirty-eight dollars for ferrying Captain William
R S Sheppard Robinson's company of mounted troops; to Robert S. Sheppard,
twenty dollars, for corn, fodder and provisions, furnished the company
J A Jackson of Captain George W. Patrick; to John A. Jackson, sheriff
of Wilcox county, the sum of eighteen dollars, for making returns
W J Ellis of Presidential election; to Walter J. Ellis, the sum of thirty-seven
dollars, for making returns of Presidential election; to James
J M Astin M. Astin, sheriff of Marion county, the sum of twelve dollars,
twelve and a half cents, for making returns of Presidential election;
A Jones to Aquilla Jones, returning officer of Blount county, of
Presidential election, the sum of twenty-seven dollars; to Paul
P Robbins Robbins, sheriff of Limestone county, for making returns of Presidential
election, the sum of thirty-three dollars and seventy-five
M Priest cents; to M. Priest, the sum of eighteen dollars, for making returns
E Henry of Presidential election for Lawrence county; to Ezekiel Henry,
the sum of twelve dollars, for making return of Presidential election,
W P Pettus for the county of Bibb; to W. P. Pettus, sheriff of Lauderdale
county, the sum of twenty-seven dollars and seventy-five
cents, for bringing returns of Presidential election; to Joel Higgins,
J Higgins sheriff of Marshall county, the sum of thirty dollars, for making
W Fitzpatrick returns of Presidential election; to William Fitzpatrick, sheriff
of Macon county, the sum of thirty dollars, for making returns
P B Waters of Presidential election; to Phlemon B. Waters, sheriff of Butler
county, the sum of seven dollars and twenty-five cents, for making
J Townsend returns of Presidential election; to James Townsend, deputy
sheriff of Russell county, the sum of thirty-seven dollars and fifty
T A Morris cents, for Presidential returns; to Thomas A. Morris, returning officer
of St. Clair county, the sum of twenty-one dollars; to Benjamin
B F Randall F. Randall, sheriff of Shelby county, the sum of eighteen

dollars, for making Presidential returns; to Ira Hobdy, the sum of forty-two dollars and fifty cents, for making returns of Presidential election; to William F. Means, the sum of thirty-three dollars, for making returns of Presidential election; to Robert Chandler, the sum of fifty dollars, for apprehending and prosecuting to conviction a horse thief; to John D. Key, twenty-four dollars twelve and a half cents, for making returns of the Presidential vote of Morgan county; to James T. Pearce, one hundred and nine dollars and fifty cents, for repairs done to State House; to Samuel McDade, fifteen dollars and twenty-five cents, for making returns of Presidential election of Walker county; to Joseph T. Cook, twenty-seven dollars and twenty-five cents, for making returns of Presidential election of Franklin county; to Winston P. Pettus, eighty-four dollars and five cents for jail fees, &c.; to Archibald D. Baggerly, three hundred dollars, for riding express from Montgomery to Columbus; to Sylvanus Walker, thirty dollars for making returns of Presidential election of Randolph county; to Thomas B. Windham, three hundred and sixteen dollars and thirty cents, for removing John Rayburn (a prisoner) from one jail to another, for expenses of guard, traveling, &c.; to Elizabeth White, administratrix of James White, deceased, three hundred and fifty dollars, for a slave executed; to John M. Lankford, thirty dollars, for making returns of Presidential election, of De Kalb county; to John McKnight, the sum of thirty-seven dollars, for making returns of the election of President and Vice President of the United States, from Chambers county; to William C. Price, the sum of twenty-seven dollars, for making returns for President and Vice President of the United States, from the county of Benton; also, to Henry Potter, the sum of three hundred and thirty dollars and seventy-five cents, for fuel furnished the two houses of the present General Assembly; to W. L. & B. C. Yancy, for publishing in the Wetumpka Argus, three months, "An act to suppress the carrying concealed weapons," the sum of twenty dollars; to J. Lacy & Co. the sum of twenty dollars, for one record book, furnished the Secretary of the Senate; to J. C. Van Dyke, the sum of eighty-eight dollars, for fuel furnished the General Assembly; to David Hagaden, jailer Montgomery county, the sum of one hundred and ninety dollars and eighty cents, for feeding State prisoners confined in the jail of said county; to Augustus Lynch, the sum of three dollars and ninety-three and three-fourths cents, for repairs, &c. done on the furniture of the Senate Chamber; to M. D. J. Slade, the sum of twelve dollars, for six copies of the Criminal Code, furnished the Senate during the present session; to J. J. Foster, the sum of twelve dollars and eighty-two cents, for articles furnished the Senate during the present session, by order of the Doorkeeper of the Senate; to William Dejarnett, James T. Dejarnett, Jacob Murph and others, the sum of two hundred dollars, being for moneys expended, and the fee allowed by law for pursuing and apprehending two of the Coakers, charged with the murder of William P. Glover; to Joel White, the sum of one thousand five hundred

I Hobdy
W F Means
R Chandler
J D Key
J T Pearce
S McDade
J T Cook
W P Pettus
A D Baggerly
S Walker
TBWindham
E White adm of Jas White
J M Lankford
J McKnight
W C Price
H Potter
W L & B C Yancy
J Lacy & Co
JC Van Dyke
D Hagaden
A Lynch
M DJ Slade
J J Foster
W Dejarnett and others

J White

A Sample

W R Hunt

Proviso.

and thirty-six dollars and sixty-nine cents, for stationery furnished the present General Assembly, and officers of the government during the past year; and to Alexander Sample, sheriff of Autauga county, the sum of thirty-one dollars and twenty-five cents, for moneys expended in boarding Solomon White, and guard, who was charged with murder, while before the committing magistrate, and for conveying said White to jail, &c.; to William R. Hunt, jailer of Madison county, the sum of four hundred and forty-two dollars, for victualing Jefferson Dance, in the jail of said county, eleven hundred and five days: *Provided*, the said Hunt shall give bond with two good securities in double the amount, to the Comptroller of the State, to refund what may be collected of said Dance, upon the final termination of the suit or indictment.

Approved, January 7, 1841.

[No. 118.] AN ACT

Making appropriations for the payment of certain claims against the State.

W J Ellis

M T Ellis

Samu'l Nunn

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That the following sums be, and the same are appropriated for the payment of certain persons having claims against the State, to wit: to W. J. Ellis, jailor of Tallapoosa county, the sum of ninety-two dollars and seventy cents, for jail fees and provisions furnished, and for removing prisoners; to Martin T. Ellis, sixty-seven dollars and sixty-five cents, for furnishing guards, removing prisoners, &c.; to Samuel Nunn, the sum of three hundred dollars, half the valuation of a certain negro slave executed; all of which above sums of money to be paid out of any money in the treasury, not otherwise appropriated.

Approved, December 15, 1840.

[No. 119.] AN ACT

Making appropriations for the payment of certain claims against the State.

Tho S Roach

J M McClanahan

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That the Comptroller of Public Accounts, be, and he is hereby required to issue his warrant on the Treasurer, in favor of the following persons, for the amounts hereinafter specified to be paid out of any money in the Treasury, not otherwise appropriated, to wit: in favor of Thomas S. Roach, register of the first chancery district of the southern division, for the sum of one hundred and one dollars and twenty-five cents, for books and stationery furnished the chancery court of said district; in favor of John M. McClanahan, register in chancery of the fourth district of the northern division, for the sum of twelve dollars and twenty-five cents, for stationery furnished the chancery court of said district.

Approved, December 22, 1840.

[No. 120.]

AN ACT

For the Relief of Africa Rountree.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, it shall be lawful for Africa Rountree, of the county of Morgan, to take, receive, hold and enjoy, by purchase, gift or inheritance, any property, either real or personal, free from the hindrance, molestation or control of her husband, Thomas B. Rountree, and the same to dispose of by will, gift or sale, in the same manner as if she were a *feme sole*: *Provided,* that the provisions of this act, shall apply only to such property as she shall acquire by her own exertions, or from other persons than her husband, and shall not operate to the prejudice of existing creditors, as to the property heretofore acquired. Privileges. Proviso.

Approved, December 11, 1840.

[No. 121.]

AN ACT

To Divorce Sarah A. Jones, from her Husband, Jonathan Jones.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That in conformity with a decree of the chancery court, held at Columbiana, in the county of Shelby, the twenty-first of October, A. D. one thousand eight hundred and forty, the bonds of matrimony heretofore subsisting between Sarah A. Jones, and her husband, Jonathan Jones, be, and the same are hereby dissolved, and annulled; and the said Sarah A. Jones, is hereby divorced from her husband, Jonathan Jones, and restored to all the rights and privileges of an unmarried woman. Divorce.

Approved, November 25, 1840.

[No. 122.]

AN ACT

For the benefit of Robert Mitchell.

Section. 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That the Comptroller of Public Accounts be authorized to issue his warrant on the treasurer for the sum of six hundred and sixty-two dollars and fifty cents, in favor of Robert Mitchell, out of any money in the treasury not otherwise appropriated; it being the one half of the assessed value of a negro slave, Jesse, executed by the sheriff of Coosa county, in pursuance of the sentence of a competent court. R Mitchell

Approved, January 9, 1841.

[No. 123.] AN ACT

To authorize and compel the Tax Collector for the county of Covington, to receive in payment of Taxes for said County, Jury Tickets, for services rendered in the Circuit and County Courts, and for other purposes.

Jury certificates to be received.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That from and after the passage of this act, the tax collector for the county of Covington, is hereby authorized and compelled to receive in payment of taxes for said county, all jury tickets for services rendered in the circuit and county courts, which may be presented to him in payment of taxes, as aforesaid, as that much money; and that the county treasurer and others, whose duty it may be to receive and receipt for the same to said tax collector, upon the presentation thereof; and all laws and parts of laws, contravening the provisions of this act, be, and the same are hereby repealed.

Compensation.

Sec. 2. *And be it further enacted,* That if any person or persons that is compelled to pay taxes in the county aforesaid, shall kill a wolf, bear or panther, he or they, on proof thereof, shall be entitled to one dollar for every such wolf, bear or panther, so killed, to be paid out of the county treasury; and it shall be the duty of the tax collector to receive said amounts in payment of taxes for said county, any law or usage to the contrary, notwithstanding.

Approved, December 22, 1840.

[No. 124] AN ACT

To authorize the election of an Assessor and Tax Collector, for the County of Cherokee.

Election.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That it shall be the duty of the sheriff of Cherokee county to advertise, and cause to be elected, by the qualified electors of said county, at each annual election, hereafter to be holden for said county, an assessor and tax collector, whose duty it shall be, after giving bond with approved security to the judge of the county court of said county, in such sum as the judge may require, not exceeding double the amount of the taxes to be raised, in any one year, conditioned for the faithful discharge of his duty, and being duly qualified to assess and collect the taxes for the county aforesaid, in the same manner, and for the same compensation, now pointed out and allowed by law, to the sheriff for such services.

Bond.

Repeal.

Sec. 2. *And be it further enacted,* That all laws authorizing or requiring the sheriff of said county of Cherokee, to assess and collect any taxes that may fall due after the passage of this act, be, and the same are hereby repealed.

Approved, December 18, 1840.

[No. 125.]

AN ACT

To Divorce Sarah Welsh from her husband Dennis R. Welsh.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That in conformity with a decree of the chancery court, holden in the city of Mobile, (May term, A. D. one thousand eight hundred and forty,) the bonds of matrimony heretofore subsisting between Sarah Welsh, and her husband, Dennis R. Welsh, be, and the same are hereby annulled; and the said Sarah Welsh is hereby divorced from her husband, Dennis R. Welsh. Divorce.

Approved, December 8, 1840.

[No. 126.]

AN ACT

For the Relief of the Citizens of Deer Head Cove, in the County of De Kalb.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That all the citizens subject to do and perform military duty, residing in that part of the county of De Kalb, known by the name of Deer Head Cove, in said county, be formed into a captain's company, which may consist of a less number than forty privates; which company, when organized and formed, shall be subject to do and perform all military duty or duties, that are now required by law. Company beat to be formed.

Approved, December 21, 1840.

[No. 127.]

AN ACT

To form a Company Beat in the County of Marshall and for other purposes.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That all that portion of Morgan which has been attached to Marshall county at the present session of the Legislature, shall, until otherwise arranged by a competent court martial, form a company beat, and shall be attached to the eighty-third regiment and eighteenth brigade of the militia of this State, and all officers, both civil and military, residing in said company beat, may hold their commissions and appointments, and act under them as though they had been commissioned or appointed respectively for said county of Marshall. Beat.

Sec. 2. *And be it further enacted,* That an election precinct at the house of Stephen Baxter is hereby abolished, and that in lieu thereof one is hereby established at the house of George W. Hale in said county. Precincts.

Approved, January 1, 1841.

[No. 128.] AN ACT

For the relief of Benjamin C. Lansdale, of the County of Henry.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That Benjamin C. Lansdale, of the county of Henry, be, and he is hereby allowed the time of twelve months, from the passage of this act, to complete his contract made with the commissioners, for the improvement of the navigation of the Choctawhachee river, and for other purposes, which contract is of date the eleventh day of November, A. D. one thousand eight hundred and thirty-nine, and is for clearing out section four, designated on the margin of said river by an index post at the termination of said section, below, numbered four, and by an index on post at the upper termination of said section, numbered five, and on the chart known as fourth section.

Allowed further time.

Sec. 2. *And be it further enacted,* That, it shall be the duty of said commissioners, so soon as the said Benjamin C. Lansdale shall have completed, to the satisfaction of said commissioners, three miles in connection thereof, to cause to be paid to him, as the law now directs, the one half of the sum contracted to be paid for the whole five miles thereof; *Provided, however,* that shall only be done, should the commissioners aforesaid be of opinion. that one half at least of the labor contracted to be bestowed, shall have been performed.

Duty of commissioners.

Approved, December 21, 1840.

[No. 129.] AN ACT

To appropriate the Surplus Funds in County Treasury of St. Clair County.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the commissioners of roads and revenue for the county of St. Clair, be required, at their next term, to appropriate an amount of the surplus funds that shall be then remaining in the county treasury of said county, not less than one thousand dollars, if there should be so much, and as much more as they may deem proper, to the erecting of a jail in said county.

Commissioners to appropriate.

Sec. 2. *And be it further enacted,* That the commissioners, appointed to superintend the erection of said jail, receive said appropriation, and that they may pay the same to the undertaker of said work, at such time and upon such terms as they may think expedient.

Who to receive.

Sec. 3. *And be it further enacted,* That, should the amount so appropriated, together with the amount heretofore raised by taxation, for said purpose, constitute a sufficiency to compensate the undertaker for the building of said jail, the court of roads and revenue shall imposeno more taxes upon the people of said county, for said purpose, any law to the contrary notwithstanding.

Approved, November 21, 1840.

[No. 130.]

AN ACT

To alter the mode of assessing and collecting the Taxes for Henry and Dale Counties.

Court to appoint justice in each beat.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the first term of the county court, in each and every year after the passage of this act, in the counties of Henry and Dale, it shall be the duty of the judge of the county court and commissioners of roads and revenue for said counties, to commission one of the justices of the peace in each beat in their respective counties, (or some other competent person,) whose duty it shall be to advertise in the same way and manner, and under the same rules and regulations as are now prescribed by law, that he is authorized to assess the taxes in that beat: *Provided, however,* that, in the absence of the judge, the commissioners of roads and revenue shall have power to make the above appointment, or in the absence of the said commissioners, the judge shall have like power.

Proviso.

County clerks duty.

Sec. 2. *And be it further enacted,* That it shall be the duty of the county clerk of the said counties, respectively, to transmit to each of the justices so commissioned, on or by the first day of April, a list of the property subject to taxation by the laws of this State.

Asseessors to make out list.

Sec. 3. *And be it further enacted,* That the assessors of taxes so appointed, shall, on or before the first Monday in July, in every year, make out a list of all the the taxable property in a book for that purpose, together with the names of all persons subject to taxation, in alphabetical order, with the amount due from each person, and return the same duly certified, to the clerk of the county court, in their respective counties, on or before the said first Monday in July.

To give bond.

Sec. 4. *And be it further enacted,* That the persons so appointed, before they enter on the duties of their office, shall give bond and security in the sum of five hundred dollars, conditioned faithfully to discharge the duties of their office, and shall be sworn to discharge the same to the best of their abilities.

Vacancies.

Sec. 5. *And be it further enacted,* That, should a vacancy occur by death, refusal to act, or other cause, the judge of the county court alone in vacation, or jointly with the commissioners of roads and revenue, may supply said vacancy.

Compensation to assessor.

Sec. 6. *And be it further enacted,* That the assessors shall receive for their services, respectively, four per cent. on the amount assessed, payable out of the county treasury, upon the certificate of the clerk, that the said assessor has made due return of his book of assessment, which certificate shall express the amount of such assessments.

On failing to give in tax.

Sec. 7. *And be it further enacted,* That the assessor shall be regulated in making assessments as now required by law, and if any person shall fail to give in their taxable property, he shall be liable to double taxes, to be entered on the books of assessments, estimated to the best of the knowledge of the assessor, and collected accordingly as other taxes; and all persons shall be held bound to render in their taxable property by the first Monday in June of each year.

Duty of clerk.

Sec. 8. *And be it further enacted,* That it shall be the duty of the clerk of the county court of their respective counties, by the second Monday in July in every year, to consolidate the returns of the assessors in a book to be prepared by him for the purpose, and make two copies thereof, one of which he shall hand to the county treasurer, and the other he shall furnish the tax collector, and take their receipts for the same, which he shall file in his office, and for these services shall have a fee of ten dollars, to be paid out of the county treasury, on exhibiting both receipts to the county treasurer.

Duty of collector.

Sec. 9. *And be it further enacted,* That the tax collectors of said counties shall proceed to collect the taxes assessed, and make due return of all moneys collected, by the first Monday in January in each year, and on a settlement with the county treasurer, the said assessor or collector shall not be allowed for any insolvents, unless first allowed and certified to by the judge of the county court, which he shall do, if at all, by the first Monday in January in each year.

Compensation.

Sec. 10. *And be it further enacted,* That the tax collector shall receive eight per cent. upon the amount actually collected and paid over by him.

Penalty for neglect of duty.

Sec. 11. *And be it further enacted,* That should the clerk of the county court, or any assessor, fail to perform any of the duties herein required of them, in either of the aforesaid counties, they shall forfeit the sum of one hundred dollars, to be recovered on motion in the circuit court of said counties, or county courts respectively, in the name of the treasurer, for the use of the county, upon three days notice, to such clerk or assessor of such motion.

Books.

Sec. 12. *And be it further enacted,* That the books of assessments herein required to be made out, shall have the force and effect of an execution, and collected accordingly.

Repeal.

Sec. 13. *And be it further enacted,* That all laws and parts of laws, contravening the provisions of this act, be, and the same are hereby repealed.

Approved, December 22, 1840.

[No. 131.] AN ACT

To attach a part of the County of Wilcox to the County of Butler.

Boundary.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the south east quarter of section one, in township ten, range eleven, be, and the same is hereby attached to, and made a portion of the county of Butler.

Approved, December 18, 1840.

[No. 132.]

AN ACT

To change the names of John Chesley and Catharine Rodgers, and to make them lawful heirs of John G. Tart, of Monroe County.

Name changed.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That, from and after the passage of this act, the name of John Chesley Rodgers shall be changed and called by the name of John Chesley Tart, and the name of Catharine Rodgers, to that of Catharine Tart.

Legal heirs.

Sec. 2. *And be it further enacted,* That they shall hereafter be considered as the legal heirs and representatives of John G. Tart, of the county aforesaid, and shall be able and capable, in law, to inherit the estate of the said John G. Tart, in the manner and form which they would inherit if they were his lawfully begotten children, any law to the contrary notwithstanding.

Approved, November 25, 1840.

[No. 133.]

AN ACT

To authorize the election of a Tax Collector, in the County of Russell.

Election.

Bond.

Oaths.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That it shall be the duty of the sheriff of Russell county, to advertise and cause to be elected by the first Monday in August next, and in each and every year thereafter, an assessor and collector, who shall, before he enters upon the discharge of the duties of his office, give bond, with at least two good securities, payable to the judge of the county court and his successors in office, the amount of the bond to be approved of by the judge of said county court, conditioned for the faithful discharge of his duties, and take the oaths now required by law of assessors and tax collectors; and the assessors and tax collectors, so elected, shall be subject to all laws which now are or hereafter may be in force, respecting assessors and tax collectors.

Compensation.

Sec. 2. *And be it further enacted,* That the assessor and tax collector, who shall be elected under the first section of this act, shall be entitled to receive the same compensation that the sheriff of said county is entitled to, for assessing and collecting the tax for said county.

Repeal.

Sec. 3. *And be it further enacted,* That all laws authorizing or requiring the sheriff to assess and collect the tax for said county, be, and the same are hereby repealed.

Sec. 4. *And be it further enacted,* That all laws and parts of laws contravening the provisions of this act, be, and the same are hereby repealed.

Approved, November 25, 1840.

[No. 134.] AN ACT

To appoint additional Commissioners for the Town of Jefferson, in the County of Cherokee, and for other purposes.

Commissioners.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That John Lowry, John S. Wilson, Jacob Hoss, George Weir, E. P. McDaniel, Aaron Clifton, William McCullough, George Bell, Esq., and B. G. Tillman, are hereby appointed commissioners of the town of Jefferson, in the county of Cherokee.

To give bond.

Sec. 2. *And be it further enacted,* That the commissioners appointed by this act, shall enter into bond, with sufficient security, to be adjudged of by the judge of the county court of said county.

Powers.

Sec. 3. *And be it further enacted,* That said commissioners shall be vested with the same power and authority, that were delegated to the commissioners heretofore appointed, by the original act appointing commissioners for said town.

Titles.

Sec. 4. *And be it further enacted,* That the said commissioners appointed by this act, together with those heretofore appointed for said town, shall have the power of making title to the purchasers of lots in said town, and to collect and apply the proceeds of the lots to the entire benefit of public buildings in said town, under the direction of the commissioners' court, any law to the contrary, notwithstanding.

Approved, January 8, 1841.

[No. 135.] AN ACT

To establish the permanent Seat of Justice for the County of Russell.

Election.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That it shall be the duty of the sheriff of Russell county, to advertise and cause an election to be holden at the different precincts in said county on the first Monday in February next, giving at least fifteen days notice thereof, for the place of the permanent seat of justice in the same.

Towns voted for.

Sec. 2. *And be it further enacted,* That the town of Girard, the present seat of justice in said county, and the town of Crocketsville, be put in nomination, and the place which shall receive a majority of the votes given in the county, shall be the permanent seat of justice for said county.

Voters.

Sec. 3. *And be it further enacted,* That each white male citizen who, on the day of election, shall have been thirty days an inhabitant of said county, and who shall have attained the age of twenty-one years, shall be deemed and held a qualified voter in said election.

Sec. 4. *And be it further enacted,* That in case the larger number of votes, shall be in favor of Crocketsville, that Major Barnett, William D. Hargrove, Henry Moffett, Hartwell B. Greene, and John Segar, a majority of whom shall act, be, and they are hereby appointed commissioners to superintend the collection of any money or moneys, now due said county, for lots sold in Crocketsville, the former county site; and also, to authorize said commissioners to proceed to sell the unsold lots in said village, and to apply the proceeds, together with any moneys collected, to the building of a court house. Commissioners.

Sec. 5. *And be it further enacted,* That all laws and parts of laws contravening the provisions of this act, be, and the same are hereby repealed. Repeal.

Approved, December 15, 1840.

[No. 136.]

AN ACT

For the final settlement of the controversy between the Counties of Jackson and Marshall, touching a certain claim of the former against the latter County.

Whereas, at the division of the county of Jackson, and the formation of the county of Marshall out of that portion of territory taken from Jackson, and a portion taken from the county of Blount, it was stipulated and agreed, that a certain sum of money should be due and owing from the county of Marshall to the county of Jackson, in consideration of certain county charges which had accrued before that time in that part of her territory out of which Marshall had in part been formed: And whereas, this matter has been already the source of much complaint with the county of Marshall, and of repeated attempts at counteracting legislation, which have tended to disturb and destroy harmony of feeling between the citizens of the two counties, and their members in the General Assembly: And whereas, it has been deemed most conducive to harmony of feeling and the general good of both said counties, to settle this dispute by a friendly and equitable compromise. Therefore, as a compromise of the matter considered and expressed, to be acceptable to both parties, Preamble.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the sum of four hundred and fifty dollars shall be held and considered to be the sum yet due and owing from the county of Marshall to the county of Jackson, in final liquidation of the claim aforesaid. Sum due from Marshall to Jackson.

Sec. 2. *And be it further enacted,* That whatever part or portion of this sum, the tax collector of Jackson shall fail to collect, and receive from the citizens of Marshall county, under the existing law, for this current year, shall be levied and collected under To be collected in Marshall.

and by the authorities of Marshall county, and paid over to Jackson county during the next year. And the county treasurer of Jackson county, shall be entitled to receive the same from the authorities of Marshall, and execute thereupon, a final receipt or acquitance; he being responsible for the faithful application of this money in like manner as for other public moneys that may come to his hands, by virtue of his office. And all laws or parts of laws conflicting with the provisions of this law, are hereby repealed.

Repeal.

Approved, January 7, 1841.

[No. 137.] AN ACT

To regulate Taxation for the County of Henry.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the judge of the county court and commissioners of roads and revenue for Henry county, or a majority of them, at their first or second term, in each and every year be, and they are hereby authorized to levy such tax for county purposes, on the property and objects now subject to taxation, as they may deem necessary: *Provided,* That nothing herein contained, shall be so construed, as to authorize the said judge and commissioners to add more than one hundred per cent. on the latest State tax, as fixed by an act approved January tenth, one thousand eight hundred and thirty-five.

To levy tax.

Proviso.

Sec. 2. *And be it further enacted,* That nothing herein contained shall be so construed as to repeal an act approved February the second, one thousand eight hundred and thirty-nine, to authorize the judge of the county court and commissioners of roads and revenue, to levy a special tax for the purpose of building a jail in the county of Henry.

Sec. 3. *And be it further enacted,* That all laws and parts of laws, contravening the provisions of this act be, and they are hereby repealed.

Repeal.

Approved, December 18, 1840.

PENAL CODE.

AN ACT

1841.

Regulating Punishments under the Penitentiary System.

Enacting clause.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That for the government and management of the Penitentiary of this State, and to adapt our criminal proceedings and punishments to such system, the provisions contained in the following fifteen chapters, be, and the same are hereby adopted and made of force, as a part of the laws of this State, to have effect and force as therein prescribed.

CHAPTER FIRST.

OF THE ORGANIZATION OF THE PENITENTIARY.

Officers of the Penitentiary—their appointment, &c.

Officers.

Section 1. The organization of the penitentiary, shall include three inspectors, one warden, one deputy warden, one physician, one clerk, and such number of overseers or turnkeys, as the inspectors may from time to time, deem necessary.

Elected.

Section 2. The warden and inspectors shall be elected by joint vote of the two Houses of the General Assembly, and shall hold their offices for the space of two years, and until their successors are elected and qualified.

Appointed.

Section 3. The clerk and physician shall be appointed by the inspectors, and commissioned to hold their offices during the pleasure of the said board of appointment, and the said clerk and physician, shall be subject to be removed by the General Assembly.

Deputy warden.

Removal.

Section 4. The deputy warden and all officers of the penitentiary, shall be appointed by the warden, and shall hold their offices during the pleasure of the inspectors; but if the warden shall think any such officer ought to be removed, and the inspectors shall not consent thereto, the warden may appeal to the Governor, who, after reasonable notice to the inspectors, if he believe just cause of complaint exists, may make such removal.

Warden's duty.

Section 5. The warden shall report immediately to the inspectors all appointments of officers which he shall make: he shall, from time to time, propose in writing, to the inspectors, such alterations as he may think advisable, in the rules and regulations for the direction of the officers, and for the government of the penitentiary.

Salaries.

Section 6. The officers of the penitentiary shall receive the following salaries, to-wit: the warden, two thousand dollars; the deputy warden, one thousand dollars; the physician, five hundred dollars; the clerk, seven hundred dollars; the turnkeys, each five hundred dollars; all of which sums, shall be paid in quarterly payments, by the warden, out of the treasury of the penitentiary, and shall be in full for all services, and no other perquisite, reward or emolument, shall be allowed to, or received by any of them: *Provided,* that the warden shall not appoint a deputy warden, until his services shall be rendered necessary, by the number of inmates of thepenitentiary.

Proviso.

Compensation to inspectors.

Section 7. The inspectors of the penitentiary shall respectively be paid the same compensation, as is allowed by law to the members of the Legislature, for each day actually and necessarily employed, in inspecting the penitentiary, and in travelling to and from the same, to be audited and paid out of the treasury of the penitentiary; but the sum to be allowed to the board under this section, shall not exceed six hundred dollars in any one year.

Guard.

Section 8. There shall be maintained at the penitentiary a guard, to be employed by the warden thereof, to consist of one sergeant, and as many privates, not exceeding twelve, as the inspectors of the penitentiary may from time to time direct; the guard shall be furnished from the arsenal of this State, with sufficient arms and accoutrements, and shall be subject to the command and direction of the warden of the penitentiary, who may dismiss at pleasure any of them; the sergeant shall receive not exceeding three hundred dollars per annum, and each of the guard not exceeding two hundred and fifty dollars, besides rations, to be established by the board of inspectors.

Officers not to receive perquisites.

Section 9. The warden, deputy warden, and other officers, except the sergeant and guard of the penitentiary, shall support themselves from their own resources, and shall not receive any emoluments or perquisites for their services, other than the compensation provided in this title.

Shall take an oath.

Section 10. The warden, deputy warden, overseers, turnkeys, sergeant and watchmen, shall, before they enter upon the duties of their respective offices and appointments, take and subscribe, before some justice of the peace or other officer authorized to administer the same, the oath of office prescribed in the constitution for public officers, and in addition thereto, shall take and subscribe the following oath:

"I do solemnly swear (or affirm,) that I will faithfully and diligently execute all the duties required of me, as ——, in the penitentiary of the State of Alabama; and will carry into execution the laws and regulations passed and prescribed for the government of said institution, as far as concerns my office, (or appointment;) I also swear (or affirm,) that I will on no occasion, ill treat, or abuse any convict under my care, or over whom I have any control, beyond the punishment ordered by law, or the rules and regulations of the institution." Oath.

2. *Powers and Duties of Officers.*

Section 11. The board of inspectors shall, from time to time choose one of their number to be their president, who shall preside at their regular meetings, and whenever in his opinion the exigency requires it, shall convene the board; they shall cause the clerk of the penitentiary to keep a regular minute of their meetings and proceedings, which shall be signed by them, and preserved in the penitentiary. Inspectors.

Section 12. The inspectors shall from time to time establish rules and regulations consistent with the laws of the State, for the direction of the officers of the penitentiary in the discharge of their duties; the government, employment and discipline of the convicts, and for the custody and preservation of the public property, and as soon as may be after the establishment of any such rules and regulations by the inspectors, they shall cause authentic copies thereof to be laid before the Governor, who may approve, annul or modify the same; and the inspectors shall cause a copy of all such rules and regulations, as shall have been approved by the Governor, to be certified as soon as may be, by the clerk of the penitentiary, and delivered to the warden. Shall make returns.

Section 13. The inspectors, or one of them, shall visit the penitentiary at least once in each week; and it shall be visited by the board of inspectors once a month, and oftener, if they shall think it necessary, for the purpose of inspecting the books, and all the concerns of the prison, and ascertaining whether the laws, and the rules and regulations relating to the prison are duly observed, and whether the officers are competent and faithful, and the convicts are properly governed and employed. Visit penitentiary.

Section 14. The inspectors shall report to the Governor forthwith, all violations of law and omissions of duty by the warden, that shall come to their knowledge, and every officer who holds his place at the pleasure of the inspectors, who shall be found unfaithful or incompetent, shall be, by them, forthwith removed. Report violations to Governor.

Section 15. The inspectors of the penitentiary shall, at least, fifteen days previous to the first day of December, in each year, transmit to the Governor a report, exhibiting a complete and comprehensive view of the transactions of the penitentiary, during the preceding year; of the number of convicts confined therein, the offences for which committed, and their respective periods of imprisonment, their ages, sizes, previous occupation, profession or Annual report.

Annual report.

employment, and where born; the report shall also state the number of convicts, who have been pardoned, discharged, or died during the year, stating the date of their conviction, and of their pardon, discharge, or death, the period of time for which they were sentenced, the counties in which they were convicted, their age, sex, and color, the deportment of each of the convicts while in the penitentiary, and in case of death, the particular disease of which the convict was supposed to have died.

Removal of convicts.

Section 16. The inspectors of the penitentiary may remove the convicts therein to such place or places of security within the State, as they may deem expedient, if in their opinion the prevalence of any epidemic, infectious, or contagious disease, or other urgent occasion, shall render such a measure necessary and proper.

Governor to visit annually.

Section 17. The penitentiary shall be visited by the Governor annually, and as much oftener as His Excellency may think proper, for the purpose of examining its condition.

Warden to give bond.

Section 18. Before the warden enters upon the duties of his office, he shall give bond to the State, in the sum of twenty thousand dollars, with sufficient sureties, to be approved by the Governor, with condition that he shall faithfully account for all moneys placed in, or otherwise coming to his hands as treasurer, and perform all the duties incumbent on him as warden of the penitentiary; and such bond shall be filed in the office of the Secretary of State, and may, from time to time, be put in suit, against any one or more of the obligors, and shall not become void on the first recovery, nor until the whole penalty shall be exhausted.

To reside at penitentiary.

Proviso.

Section 19. The warden and deputy warden shall reside constantly within the precincts of the penitentiary, and both shall not be absent therefrom at the same time; and neither the warden, or any person appointed by the warden, shall, during the time of holding his office, be employed in any business for private emolument not pertaining to his office: *Provided*, that it shall be lawful for the warden or deputy warden to engage in agricultural pursuits to such extent as not to interfere with his public duties.

Warden to have charge of the penitiary, property, &c.

Section 20. The warden shall have the charge and custody of the penitentiary, with the lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property within the precincts thereof, or appertaining thereto; he shall be treasurer of the penitentiary, and shall receive and pay out all moneys granted by the legislature, (if any) for the support thereof, and shall cause to be kept in suitable books, regular and complete accounts of all the property, expenses, income, business and concerns of the establishment; and all the books and documents relating to the concerns of the penitentiary, shall at all times be open to the examination of the inspectors, who shall semi-annually or oftener if they think necessary, carefully examine the said books, and compare them with the vouchers and documents relating thereto.

Section 21. It shall be the duty of the warden to examine daily into the state of the penitentiary, and the health, conduct and safe

Daily examination.

keeping of the convicts, to use every proper means to furnish them with employment, to superintend all the manufacturing and mechanical business of the penitentiary, to receive the articles so manufactured, and to sell and dispose of the same for the benefit of the State.

Make contracts.

Section 22. Whenever the inspectors shall so direct, it shall be the duty of the warden to make contracts, from time to time, for the labor of the convicts, with such persons and upon such terms, as may be deemed most beneficial for the State; all contracts so to be made shall be reduced to writing, and a counterpart of every such contract shall be filed with the clerk of the penitentiary, and a copy thereof shall be delivered to the inspectors.

Enforce payment of debts.

Section 23. It shall be the duty of the warden to enforce the payment of all debts due to the penitentiary as soon and with as little expense to the State as possible, but he may, with the approbation of the inspectors, accept of such security from any debtor, on granting time as may be deemed conducive to the interest of the State.

Moneys to be deposited.

Section 24. All moneys received by the warden of the penitentiary, on account thereof, shall be deposited by him in the Branch of the Bank of the State of Alabama, at Montgomery, subject to be drawn therefrom upon his own check, to meet all proper, just and legal charges upon the treasury of the penitentiary, and no officer or other person whatsoever, shall on any pretence, use the funds of the same, except for the purposes prescribed by law.

To make annual report.

Section 25. The warden shall, as soon as may be, after the first day of October, in each year, cause to be made, full and detailed accounts, to be closed on that day, of all the disbursements and expenses, and all the receipts and profits of the prison, accompanied by sufficient vouchers, which accounts after having been examined and approved by the board of inspectors, shall be audited and settled by the Comptroller of Public Accounts, who shall file the same in his office, and accompany his annual report to the legislature, with an abstract thereof.

Duty of deputy warden.

Section 26. The deputy warden, clerk, the overseers and turnkeys, shall perform such duties in the charge and oversight of the penitentiary, the care of the property thereto belonging, and the custody, government, employment and discipline of the convicts, as shall be required of them by the warden, in conformity to law and the rules and regulations of the penitentiary.

Vacancies.

Section 27. Whenever the office of warden shall be vacant by death, resignation, or otherwise, the deputy warden shall have all the powers, and perform all the duties of warden, until one shall be appointed and qualified, and such deputy in such event, shall be subject to all the obligations and liabilities imposed by law on the warden; no deputy warden shall be permitted to enter on the duties of his office, until he shall enter into bond with sufficient sureties, to be approved by the board of inspectors, in the sum of twenty thousand dollars, conditioned to perform all the duties of deputy warden, and faithfully account for all moneys or effects which shall come to his hands, in the event of a vacancy in the office of warden, by the death or resignation of the warden or otherwise, during the continuance of such deputy warden in office, and the Governor may fill any vacancy which may occur, not herein otherwise provided for.

Duty of physician.

Section 28. The physician shall visit the hospital of the penitentiary, at least, every other day, and as much oftener as may be necessary, prescribe for convicts that may be sick, and attend to the regimen, clothing and cleanliness of such of them as are in the hospital; he shall keep a regular journal, which shall remain at the penitentiary, of all admissions to the hospital, stating the time, the nature of the disease, with his prescriptions, and the treatment of each patient, and the time of his discharge from the hospital, or his death; the said journal shall also contain regular entries of all orders that shall be given for supplies for the hospital department, specifying the articles ordered; all such orders shall be in writing, and the warden shall provide the supplies so ordered, under the direction of the inspectors.

To keep register, &c.

Section 29. It shall be the duty of the physician of the penitentiary, to keep a register of all the convicts under his charge, stating the diseases with which they may be afflicted, and the state of their health on entering and leaving the hospital, and the cause of disease, when the same can be ascertained; and, also, a register of all infirm convicts, stating their names, ages, places of birth and the particular infirmity of each; and such register shall always remain in the hospital, open to inspection.

To visit the sick convicts.

Section 30. Whenever any convict shall complain of such illness as requires medical aid, notice shall be given to the physician, who shall visit such convict, and if in the opinion of the physician, the illness is such as requires his removal to the hospital, the warden may order such removal; and the convict shall remain in the hospital, until the physician shall determine that he may leave it without injury to his health.

Duty in cases of insanity.

Section 31. Whenever the physician of the penitentiary shall report to the warden, that any convict, confined therein, is insane, it shall be the duty of the warden, to cause such insane convict, to be removed to the hospital for maintenance, until the expiration of the term for which he shall be sentenced, if he shall so long continue insane; and if such insane person shall recover from his insanity, before the expiration of the term for which he was sentenced, the warden shall cause him again to enter on his regular labor as a convict.

Hospital to be built.

Section 32. It shall be the duty of the commissioners of the penitentiary, as soon as practicable hereafter, to cause to be erected under their inspection, within the walls of the penitentiary, a substantial building, suitable for a hospital, which shall be of such dimensions, and upon such plan, as may seem to the commissioners best calculated to promote the comfort of the sick, and contribute to their safety; the expense of erecting said building shall be defrayed from the appropriation heretofore made, for the purpose of carrying into effect the provisions of an act to establish a State prison and penitentiary, or that may hereafter be made for that purpose: *Provided, however*, that the plan agreed upon by the commissioners, shall be subject to modification by the Governor. Proviso.

Officers exempt. Section 33. The inspectors and all persons holding offices or appointments in the penitentiary, shall be exempted, during their continuance in office, from serving on juries, from militia duty and from working on the public roads.

Contracts for provision. Section 34. The principal articles purchased for the use of the penitentiary, such as the rations and fuel, with their transportation, shall be contracted for by the year, when such contracts can be advantageously made; and the warden shall give previous public notice, in two newspapers at least, in this State, of the articles wanted, the quantity and quality thereof, the time and manner of delivery, and the period during which proposals therefor will be received, and such notice shall be published a sufficient length of time, for the information of persons who may probably be desirous to offer proposals for such contracts.

Proposals. Section 35. All such proposals shall be in writing, and sealed up; and on the day appointed, they shall be opened by the warden in presence of the inspectors, who shall cause all such offers to be entered in a book and compared; the person offering the best terms, with satisfactory security for the performance, shall be entitled to the contract; unless it shall appear to the warden and inspectors, that none of the offers are as low as the fair market price; in that case, no offer shall be accepted, and the warden, with consent of the inspectors, may advertise again as before, or he may proceed to make contracts for any of the articles wanted for the penitentiary, in the best way he can for the interest of the State, without further notice.

Contractor to give bond. Section 36. Every such contractor shall give bond in a reasonable sum, with satisfactory surety or sureties, for the performance of his contract; and no officer of the penitentiary shall be concerned or interested, directly or indirectly, in any contract, purchase or sale, made on account of the penitentiary.

Bills of supplies to be taken. Section 37. The warden shall take bills of the quantity and price of supplies furnished for the penitentiary, at the time of delivery; and the clerk, as the warden shall direct, shall compare the bills with the articles delivered; if the bills are found correct, he shall enter them with the date upon a book to be kept for that purpose; in like manner bills shall be taken and entered of all services rendered for the penitentiary; if any bill for supplies or services shall be discovered to be incorrect, the clerk shall omit to enter it and immediately give notice to the warden, that the error may be corrected.

Contracts how made. Section 38. All contracts on account of the penitentiary, shall be made by the warden in writing, and when approved in writing by the board of inspectors, shall be binding in law, and the

To be binding.

warden or his successor may sue thereon to find judgment and execution; no such suit shall abate by reason of the office of warden becoming vacant, but any successor of the warden pending such suit, may take upon himself the prosecution thereof, and upon motion of the adverse party he shall be required so to do, or submit to a non-suit.

Purchase of raw material.

Section 39. It shall be the duty of the warden of the penitentiary under the direction of the inspectors, to purchase and pay for out of any funds in the treasury, such raw materials as may be deemed necessary to be manufactured and used by the convicts.

Of medicines.

Section 40. The necessary medicines and other hospital stores for the use of the penitentiary, shall be purchased from time to time as may be requisite, by the warden with the advice of the physician and under the direction of the inspectors.

Books, &c. to be considered public documents.

Section 41. All books of accounts, registers, returns and other documents and papers relating to the affairs of the penitentiary, shall be considered as public documents, and remain therein, and the warden shall cause to be preserved, official copies of his correspondence with the Governor, inspectors, or other public officers, and of any official communications he may have received from them.

3d. *Removal of Prisoners to the Penitentiary.*

By sheriff.

Penalty for neglect.

Section 42. Every person sentenced in any court of this State, for any offence punishable by imprisonment in the penitentiary, shall as soon as possible after his sentence be safely removed by the sheriff of the county in which the conviction shall have taken place, to the penitentiary, and therein be kept during the term of his or her confinement, in the manner and on the terms prescribed by law, and every sheriff who shall neglect to remove such convict, from the jail within five days after the adjournment of the court aforesaid, shall forfeit all claims for compensation for such removal, and shall moreover be liable to be proceeded against therefor by indictment, and on conviction shall be confined in a sum not less than five hundred dollars, unless the jury trying the convict within the time aforesaid; and nothing herein contained shall discharge the sheriff from liability to a prosecution for an escape.

Powers of sheriff.

Section 43. Whenever any person or persons shall be sentenced to undergo imprisonment as aforesaid, it shall be lawful for the judge or clerk of the court, by warrant under his hand and seal, to impower the sheriff, charged with the conveyance of a prisoner, or prisoners, in all counties and places through which he may pass, to impress as many men not exceeding two for each convict, except in cases hereinafter provided for, as may be necessary for the safe conveyance of such prisoners, to the penitentiary, which warrant the sheriff is hereby required to execute, and to his commands, in virtue thereof all persons are required to pay due obedience under pain of forfeiting one hundred dollars, to be sued for and recovered by the sheriff for the use of the State: *Provided*, that the sheriff shall in all cases when it is practicable detail a sufficient guard, in the county where the prisoner or prisoners are convicted, in order to insure their safe conveyance to the penitentiary: *And provided also*, that the judge trying such offender, may whenever in his opinion the safe conveyance of any convict, shall require a stronger guard than is above provided for, direct an additional number to be impressed.

Proviso.

Proviso.

Section 44. If by any attempt to rescue a convict on the way to the penitentiary, or by any other unforeseen danger, it may become necessary for the safe conveyance of such convict, to summon a stronger guard, than the sheriff conducting the prisoner may have been authorized to summon, it shall be lawful for such sheriff, to summon such additional guard, as shall be essentially necessary for that purpose, and the additional guards shall be paid as other guards, on the oath of the sheriff that they were in his opinion necessary.

To summon guard.

Section 45. The sheriff, his officer and guard attending any prisoner in pursuance of the provisions of this chapter, shall be privileged from arrest in all cases except treason, felony and breach of the peace, during the time they are engaged in conveying such prisoner or prisoners, to the penitentiary, and returning therefrom, allowing one day for every twenty miles from their respective places of abode.

Privileges.

Section 46. If it shall be made to appear to any judge, sentencing any convict to the penitentiary, that the sheriff is sick, or that the situation of his family is such as to require his attention, or that the public interest would be likely to suffer by his absence, in such case, during the sitting of the court, the said judge shall be authorized, or after the adjournment of the court, any other judge of the circuit court, shall be authorized to release the sheriff from the duty of conveying such convict to the penitentiary, if he can substitute in his stead, a trust worthy and responsible deputy; in the event of such substitution, such deputy shall be invested with all the powers, and be subject to all the responsibilities of the sheriff, in the performance of the duties devolved upon him.

Sheriff released when sick. Judge to appoint substitute.

Section 47. When any sheriff shall convey any convict to the penitentiary as aforesaid, he shall be entitled to receive the compensation hereinafter mentioned, for which the Comptroller of Public Accounts shall furnish him with a warrant on the treasurer; on the production of the receipt of the warden of the penitentiary for such convict, and also the affidavit of the said sheriff sworn to before the warden (who is hereby authorized to administer the oath,) or some judicial officer, stating the number of miles on the usual route from the place where the convict was sentenced to the penitentiary and the number of the guard employed to insure the safe conveyance of the convict, and the distance each of said guard may have traveled; the sheriff shall, for every thirty

Compensation to sheriff and guards.

Compensation. miles he may necessarily travel, in going to and returning from the penitentiary, be allowed for himself two and a half dollars, for each of the guards two dollars, and for each convict one dollar and a quarter, to be paid to the sheriff, from whom each guard shall be entitled to receive the compensation hereby allowed them; and the sheriff shall be entitled to receive in addition to the amount paid him, for himself, the guards and the convict, the amount expended for ferriage sand tolls, in transporting such convict to the penitentiary; should any sheriff convey more than one convict, to the penitentiary at the same time, he shall not be entitled to other or greater compensation for himself and guard, than is above provided; and the deputy of any sheriff, who shall convey any convict to the penitentiary, as required by law, shall upon producing the receipt, and making the affidavit above specified, be entitled to receive the compensation hereby allowed to sheriffs, and shall pay to the guard their respective portions as the sheriffs are hereby directed to do.

Expenses. Section 48. The sheriff and guard shall defray their own expenses out of the compensation hereby allowed them.

Duty of jailers. Section 49. It shall be the duty of all jailers to receive, and securely keep, (and make therefor the customary and legal charge for victualing prisoners,) all convicts on their way to the penitentiary, whenever the sheriff or other officer conveying such convict, may think it necessary to have them thus secured for the night, or during any other time they may be necessarily detained on the way.

Escapes. Section 50. All the provisions in regard to the escape or attempt of convicts to escape from the penitentiary, shall extend to escapes or attempts to escape, made at any time subsequent to conviction, whether previous to leaving the place of trial, or while on the way to the penitentiary.

Penalty for suffering escapes. Section 51. If any sheriff, deputy sheriff, or guard, having charge of a convict shall at any time subsequent to their trial, and previous to their delivery to the warden, voluntarily suffer him or her to escape from custody, such sheriff, deputy, or guard, shall, on conviction, suffer the same imprisonment such convict was sentenced to undergo: Proviso. *Provided*, that, if such convict so escaping, be retaken upon fresh pursuit, and delivered to the warden of the penitentiary, in such case, the sheriff, deputy, or guard, shall be punished by imprisonment in the penitentiary, for any term within the discretion of the court, not to exceed, however, the period for which such said convict was himself sentenced.

Warden to receive convicts. Section 52. It shall be the duty of the warden, at all times, to receive into the penitentiary, on the order of the Governor, any person convicted of any crime punishable with death, or infamous punishment, who shall be pardoned on condition of being imprisoned, either for life, or a term of years, in the penitentiary, and to confine such person according to the terms of the pardon.

Section 53. The warden shall receive into the penitentiary, all persons convicted before any court of the United States, held within either of the districts of Alabama, and sentenced by such court to the punishment of imprisonment in the penitentiary; and he shall safely keep and employ such convicts, pursuant to their sentence, and the rules and regulations of the penitentiary, until such sentence shall be performed, or the said convicts shall be otherwise discharged, by due course of the law of the United States.

Warden to receive convicts U. S. courts.

4. *Police of the Penitentiary, and the Punishment of Escapes.*

Section 54. It shall be the duty of the warden, upon the reception of any convict into the penitentiary, to take his or her height, and cause the same to be entered in a book, in which he shall also note when such convict was received, his or her name, age, complexion, color of his or her hair and eyes, the county in which convicted, the nature of the crime, period of imprisonment, and place of his or her nativity; and the baggage and person of every convict shall be carefully searched, and every instrument therefrom taken, by which he or she may effect his or her escape, before he or she becomes an inmate of the penitentiary.

Description of convicts to be taken.

Section 55. It shall and may be lawful for the warden of the penitentiary to take in charge any property, money, or other thing of value, in the possession of any convict, at the time of his entering the penitentiary, and to pay the same to such person as the convict shall in writing direct, or to the convict upon his discharge, or to his personal representatives in the event of his death, previous thereto, and should no personal representative be appointed within six months, then the same shall be paid into the treasury of the State.

Property of convicts.

Section 56. In order to prevent the introduction of contagious disorders, it shall be the duty of the warden to cause every person who shall be sentenced to the penitentiary, to be washed, cleansed, and kept entirely apart from the other convicts, until it shall be certified by the physician, that he may with safety to their health be permitted to join with them in labor.

Convicts to washed, &c.

Section 57. It shall be the duty of the warden to cause the clothes of the convicts, when received into the penitentiary, to be washed, and carefully put away, placing a ticket with their names on each, to be returned to them on their discharge, or if it should be the wish of any convict, that his or her clothes shall be sold, the warden shall dispose of them to the best advantage, and retain the money arising from the sale, to be paid to such convict on his or her release, or disposed of as provided in the fifty-fifth section.

Clothes of convicts.

Section 58. All persons sentenced to punishment in the penitentiary, shall be employed for the benefit of the State; no communication shall be allowed between them and any person without the prison; they shall be confined in separate cells in the night time, and in the day time, all intercourse between them shall, as far as practicable, be prevented.

Employment and confinement.

How clothed.

Section 59. All convicts shall be clothed during the term of their confinement, in a comfortable manner, in coarse and cheap clothing, and made in some peculiar style, so as to distinguish them from the citizens generally; the number of suits of clothing and their style, to be determined by the board of inspectors.

On Sabbath.

Section 60. That the Sabbath may be suitably distinguished by the convicts, they shall each be furnished by the warden, under the direction of the inspectors, with a neat and cheap suit of clothes to be worn on that day.

Means to promote neatness, health, &c.

Section 61. The warden of the penitentiary shall cause the prisoners to wash themselves every morning, and immediately before meals, to put on clean under garments at least once a week, and all the males shall have their beards shaved as often as may be necessary, and their apartments shall be swept every morning, and fumigated during the summer and fall seasons, once a week or oftener, with some disinfecting substance, and the warden shall cause such other measures to be adopted to promote neatness and health, as may be recommended by the physician, or directed by the board of inspectors.

Management of cells, &c.

Section 62. The warden shall cause all the rooms and cells to be numbered, and divided into as many wards as there may be turnkeys, allotting to each ward, as near as may be, an equal number of rooms and cells, and assign each ward to a turnkey, whose duty it shall be, under the direction of the warden, to examine every evening, the doors, beds and rooms of the convicts, to search and lock them before dark, and not to permit the convicts to carry into their cells, any instrument that may assist them in escaping; also to extinguish carefully all the fire in the work shops, and a bell shall ring every evening, which shall be a signal for the extinguishment of lights in the rooms and cells of the convicts.

Convicts to be furnished with Bibles.

Section 63. It shall be the duty of the warden carefully to watch over the conduct of the convicts, each convict shall be provided with a bible, which he shall be permitted to read in his cell at such times as he is not required to perform labor; and the warden shall, from time to time, under the direction of the inspectors, distribute among the convicts such cheap books as are calculated to improve the mind and meliorate the heart, and the inspectors shall report to the Governor such of the convicts as may distinguish themselves by their industry and correct deportment, and who, by an exemplary line of conduct, may have evinced an entire reformation.

Diet, &c.

Section 64. The diet of the prisoners, shall in quantity and quality, be such as shall be directed by the board of inspectors, and the provisions shall be sound and wholesome, and the regular hours for eating, shall be announced by the ringing of a bell, at the sound of which, all the convicts will assemble at their respective tables, except the sick, who shall be furnished agreeably to the directions of the physician.

Section 65. The convicts shall be permitted to work for themselves during the time allotted to their meals and rest, and after they shall perform such daily labor as shall be imposed on them, on such articles as the warden may approve; but they shall not be allowed to perform any work in their cells, without the permission of the warden: the warden may furnish them with materials from the stock belonging to the penitentiary, to be paid for out of the wares wrought by them, and the clerk shall take an account of all the articles wrought by them at such times; and they shall be sold by the warden, or under his direction: no convict shall be permitted to receive the money thus earned by him, during the period of his confinement; but the same shall remain in the hands of the warden, to be paid to the convict when released, or expended in the purchase of such articles as he may desire, not inconsistent with the rules of the penitentiary, or to be paid to his family by his direction.

Convicts allowed to work for themselves.

Letters to or from convicts to be read.

Section 66. All letters sent to or from any convict, shall be first opened and read by the warden, and in case of vacancy or absence, by the deputy warden, and if nothing appears therein, improper or unsafe to the institution, then such letters shall be by him delivered or forwarded as desired; and any relation or friend, shall be allowed, in presence of the warden, or deputy warden, to speak to any of the convicts, when in the opinion of the warden, the condition of his family or property may require it; and all information concerning the convicts, shall be furnished to their friends, on personal application, or by letter, (free of postage,) directed to the warden.

Good conduct.

Section 67. For the encouragement of the convicts to conduct themselves with industry and propriety, it shall be the duty of the Governor, whenever it appears from the report of the warden, that the conduct of a convict has been exemplary and unexceptionable, for the entire year, to remit two months of the period for which such convict may have been sentenced to imprisonment.

Divine service.

Section 68. The inspectors and warden shall if practicable, procure suitable ministers of the gospel, to perform divine service in the chapel of the penitentiary, at least once every Sunday, to instruct the convicts in moral and religious duty, and visit the sick on suitable occasions.

Spirituous liquors prohibited.

Section 69. No spirituous or intoxicating liquors shall be introduced into the penitentiary, except such as may be used in the families of the officers residing within its precincts, or as may be necessary for the hospital department; and every overseer, turnkey or watchman, who shall suffer any spirituous or intoxicating liquors to be used by or given to any convict, unless directed so to do by the physician in writing, shall forthwith be dismissed from his office or appointment, and forfeit all wages due to him, and be liable to a penalty of one hundred dollars, to be sued for and recovered in the name of the warden of the penitentiary.

Restrictions about speaking to convicts.

Section 70. No officer or person holding any appointment, the duties of which are to be discharged within the precincts of the penitentiary, shall say any thing in respect to the police of the prison in the presence of a convict, except it be to direct him or her in his or her duty, or to admonish him or her for delinquency; neither shall he hold conversation with convicts, or allow them to speak to him on any subject, except it relate to necessary duty or business.

Male and females to be kept separate.

Section 71. The male and female convicts shall at all times and on all occasions be kept separate and apart; and the females as well as the males shall be kept separate and apart at night.

Punishment.

Section 72. If any convict shall neglect or refuse to perform the labor assigned to him or her, or shall wilfully injure any of the materials, implements or tools, or shall engage in conversation with any other convict, or shall in any other manner violate or infringe any of the regulations of the penitentiary, he shall be punished by solitary confinement, for a period not exceeding thirty days for each offence, at the discretion of the warden, or in case of vacancy or absence, then at the discretion of the deputy warden: *Provided,* that if the board of inspectors, should believe the punishment inflicted to be too severe, they shall have power to remit a portion thereof.

Proviso.

Warden to report.

Section 73. It shall be the duty of the warden or deputy warden, to make a written report forthwith to the president of the board of inspectors of the name of each person committed to solitary confinement, as aforesaid, with a statement of the nature of his offence, and the period for which committed, which report shall be recorded by the clerk of the penitentiary, and the president of the board of inspectors, shall if he deem it expedient, convene the board for the purpose of considering the case reported; and if it shall appear to the inspectors, or a majority of them, either at a called or stated meeting, that the punishment of solitary confinement was improperly inflicted, they are hereby required to certify the same on the minutes of their proceedings.

Convict, how confined.

Section 74. Every convict against whom the punishment of solitary confinement shall be awarded, by the sentence of a court, or for a violation of any of the rules and regulations of the penitentiary, shall be confined in a solitary cell, and during such confinement shall be fed with bread and water only, unless the physician of the penitentiary, shall certify to the warden that the health of such convict requires other diet.

Proceedings in case of death.

Section 75. Whenever any convict shall die in the penitentiary, it shall be the duty of the warden forthwith to notify some one of the inspectors, if within a convenient distance, and two or more justices of the peace of Coosa county, to examine the body of the deceased, and it shall be the duty of such of them as shall attend, to ascertain as nearly as may be, the cause of his death, and report the same to the board of inspectors; and the warden shall not permit the body of any deceased convict to be removed to the burial place until such examination shall be had; if the body of any deceased convict is not applied for, by his friends, within a convenient time after such examination, the warden shall cause it to be decently interred in the burying place, to be provided in the vicinity of the penitentiary.

Section 76. If any convict, at the expiration of his term of imprisonment, shall labor under an acute or dangerous disease, such convict shall not be discharged while sick, unless at his request.

Not discharged when sick.

Section 77. Each convict shall receive at his or her discharge a sum of money not exceeding ten dollars, at the discretion of the inspectors, to enable him or her to reach his or her place of residence, and no convict shall leave the prison without being furnished with decent clothing.

Money furnished on discharge.

Section 78. Such of the foregoing regulations with all others that may hereafter be adopted by the legislature, or inspectors with the approbation of the Governor, with which it may be necessary that the convicts shall be acquainted, together with all the sections of this act, relating to escapes by convicts, shall be printed with type sufficiently large to be conveniently read, and placed against the wall in the workshops and in each cell; and the same shall be read and explained by the warden, to each convict on his admission to the penitentiary.

Regulations to be printed.

Section 79. If any convict imprisoned in the penitentiary for a term less than life, shall escape or shall attempt by violence, to escape, on conviction thereof, he shall suffer such additional imprisonment, as the court in which such offender shall be convicted, shall direct, not less than two nor more than five years; and convicts so escaping shall remain in the penitentiary, as other inmates, after their apprehension, until their trial takes place, unless their term of imprisonment has expired, in which event they may be discharged on giving sufficient bail; upon which trial the fact of imprisonment in the penitentiary shall be *prima facie* evidence of a conviction and sentence to imprisonment therein.

Punishment for attempt to escape, &c.

Section 80. If any convict confined in the penitentiary for a term less than life, shall assault the warden, or any other officer of the same, with intent to kill or maim, he, she, or they so offending, shall, on conviction thereof, be sentenced to confinement in the penitentiary for a period not less than ten nor exceeding twenty years; and if any two or more convicts thus confined, shall conspire for the purpose of killing or maiming any officer of the penitentiary, on conviction thereof, he, she, or they, shall be sentenced to undergo a further confinement in the penitentiary, for a term not less than five nor more than ten years, to commence at the expiration of the term for which such convict was under sentence, unless such term shall have expired previous to the trial, in which event the term of imprisonment, shall commence from the time when he, or she may be delivered to the warden of the penitentiary.

For assaulting officers.

For conspiring to kill.

Section 81. If any convict in the penitentiary, under sentence of imprisonment for life, shall escape therefrom, or shall attempt by violence to escape, or shall assault with intent to kill or maim the warden or any inspector, or other officer, or person employed in the government of or custody of the penitentiary, he shall be punished by solitary confinement in the penitentiary not exceeding

Convicts for life, how punished.

six months, to be executed at such time or times as the court shall direct.

Persons aiding convicts to escape, how punished.

Section 82. Every person who shall convey into the penitentiary any disguise, instrument, tool, weapon, or other thing, useful to aid any convict in making his escape therefrom, with intent to facilitate the escape of any convict there lawfully detained, or who shall, by any act done, aid any convict in an endeavor to escape, whether such escape be attempted or effected, or not, such person shall be imprisoned in the penitentiary, not less than two nor more than four years; and every person who shall forcibly or fraudulently attempt to rescue a convict, held in custody by any officer or other person, under sentence of imprisonment in the penitentiary shall be punished by imprisonment in the penitentiary, for a period not less than two nor exceeding five years; and any person who shall forcibly or fraudulently rescue any convict, held in custody by any officer or other person, under sentence of imprisonment in the penitentiary, shall be punished by imprisonment in the same for a period equal to the unexpired term for which the convict, thus rescued, was imprisoned: *Provided, however*, that if such term shall be less than two years, the offender shall be confined in the penitentiary for that length of time.

Proviso.

Convicts of U. S. courts.

Section 83. In case any convict committed by the courts of the United States, shall escape, or attempt to escape out of the penitentiary, he shall be liable to the like punishment, as if he had been committed by virtue of a conviction and sentence under the authority of this State; and the warden or other officer having charge of such convict, shall be liable to the like penalties and punishment, for any neglect or violation of duty in respect to the custody of such prisoner, as if he had been committed by virtue of a conviction and sentence under the authority of this State.

Escapes.

Section 84. Whenever any convict imprisoned in the penitentiary shall escape therefrom, it shall be the duty of the warden to take all proper measures for his apprehension, and for that purpose he shall forthwith communicate to the Governor the fact of such escape, the time when, and the circumstances under which it was committed, together with a particular description of the convict, his age, size, complexion, color of hair and eyes, from what county committed, for what offence and when.

Penalty for suffering to escape.

Section 85. If any officer, or other person employed in the penitentiary shall voluntarily suffer any convict imprisoned therein to escape, or shall in any way consent to such escape, he shall be punished by imprisonment in the penitentiary, for a period equal to the unexpired term of the convict or convicts escaping, if such unexpired term shall exceed two years; and in no case less than two years.

For allowing convicts to be at large.

Section 86. If any officer or person employed in the penitentiary shall suffer any convict under sentence of solitary imprisonment to be at large, or out of the cell assigned to him or her, unless directed by the physician to remove him or her to the hospital, on account of sickness, or shall suffer any convict imprisoned in the penitentiary to be at large, out of the precincts of the same, or to be visited, conversed with, or in any way relieved or comforted, contrary to the regulations of the penitentiary, he shall, on conviction, be punished by fine, not less than one hundred and not exceeding five hundred dollars.

5. *Mode of serving Process and taking Testimony of Convicts.*

Section 87 Whenever any suit shall be instituted against any convict imprisioned in the penitentiary, the writ, summons or supœna, shall be directed to the warden, who shall make it known to the convict, by leaving a copy with him, and shall return the original to the proper court; in all suits pending against any one who shall hereafter be convicted and imprisoned in the penitentiary, in which it may be necessary to issue any mesne process against him, after such imprisonment, the like proceedings shall be had; if no appearance is entered for the convict, after the return of process, the court before which the suit is pending, shall require the plaintiff to prove the claim, or cause of action, in the same manner, as if the general issue was pleaded by the convict; no judgment shall be rendered in any suit commenced by attachment against a convict so imprisoned, until a notice snall have been issued to inform the convict of the proceedings against his property; which notice shall be served and returned by the warden, as other procees against convicts.

Warden to serve process on convicts.

Duty of court.

Section 88. Whenever the complainant in any suit in equity against an imprisoned convict defendant, shall require his answer to the bill of complaint, the master in chancery of the court in which the bill is pending, shall issue a commission, to be directed to the inspectors of the penitentiary, requiring some one of them to take the answer of such convict; if such convict will voluntarily answer the bill of complainant, he shall be allowed the aid of counsel to prepare his answer, at such convenient time or times as the inspector executing the commission may direct; the answer shall be sworn to before the inspector taking the same, and be returned with the commission to the proper court; if the convict shall refuse or neglect for the space of thirty days, after he shall be required by the inspector to make the answer, the inspector shall return the commission, and thereon certify the refusal or neglect to answer, after which the allegations of the bill may be taken as confessed, and a decree made against such defendant, as if they had been established by proof; but nothing herein contained shall prevent the chancellor, from giving to the convict further time to answer the bill; if, in his opinion, the justice of the case shall require it.

Answer to bills in chancery, how taken.

Section 89. Whenever the presiding judge of any circuit court shall have reason to believe, that the testimony of an imprisoned convict is necessary, in any prosecution by the State, and that other evidence cannot be obtained on behalf of the State, he may direct

Proceedings when the testimony of a convict is necessary.

a writ of *habeus corpus ad testificandum* to be issued, requiring the warden on a certain day to be named in the writ, to have the body of the convict before the circuit court in which his testimony shall be required; it shall be the duty of the warden so to provide, that the convict shall appear before the circuit court, at the time and place designated in the writ; and for this purpose he shall be authorized to employ a trust worthy deputy, and a sufficient guard to prevent escapes; the deputy and guard shall be allowed the same compensation as is allowed to the sheriff and guard summoned by him, for removing a convict to the penitentiary, and the further sum of two dollars for each day they shall remain in attendance on the circuit court, charged with the custody of the convict; when the convict shall have given his testimony, or the prosecution shall have been continued, he shall be remanded to the penitentiary, and the deputy and guard shall conduct him thither with all convenient speed; the convict, the deputy and guard, in going to and from, and while remaining at the circuit court, shall be respectively liable for an escape or attempt to escape, in the same manner as they would have been, if the convict was within the penitentiary under their custody; and it shall be the duty of the sheriff or jailor of the county, to receive and safely keep the convict in the county jail, during his attendance upon the court, if required so to do by the persons having such convict, for which the legal charge of victualing prisoners shall be allowed.

When and how taken in circuit courts.

Section 90. When any party to a civil suit, shall wish to take the testimony of an imprisoned convict, he shall make affidavit of the materiality of his testimony, and file interrogatories, in the office of the clerk of the court where such suit is pending, and serve a copy of the same on the adverse party, giving to him such notice as the clerk may deem reasonable, when a commission shall issue; at any time before the commission is issued, the adverse party may file cross interrogatories; after the expiration of the time prescribed by the clerk for notice, he shall issue a commission, with the interrogatories and cross interrogatories, if any annexed, directed to the inspectors of the penitentiary, any one of whom is hereby authorized and required, to take the answers of the convicts on oath to the same, and make return thereof, together with the commission to the proper court.

Defendants in State cases, &c.

Section 91. The defendant in a prosecution by the State, may in like manner take the testimony of an imprisoned convict in his behalf, but the notice and copy of interrogatories in such case, shall be served on the solicitor of the circuit in which such prosecution is pending; and nothing contained in this, or preceding sections, shall authorize the admission of the testimony of a convict, who is by law an incompetent witness.

CHAPTER SECOND.

Of Offences against the Public Peace.

Treason.

Section 1. Every person who shall commit the crime of treason against this State and be thereof convicted, shall suffer death; or confinement in the penitentiary for life at the discretion of the jury trying the same.

Punishment for aiding slaves in rebellion or insurrection.

Section 2. If any free person shall aid and assist or be in anywise concerned with any slave or slaves, in any actual or meditated rebellion or insurrection against the white inhabitants of this State; or against the laws and government thereof; or shall in any manner advise, consult or plot with any slave or slaves for the purpose of encouraging, exciting, aiding or assisting in any such rebellion or insurrection, either actual or meditated; such free person shall, on conviction of any one of the offences declared by this section, suffer death; or confinement in the penitentiary for life, at the discretion of the jury trying the same.

For exciting discontent, &c., among slaves.

Section 3. If any person shall in this State write, print, draw, paint or engrave, or shall aid or abet, in writing, printing, drawing, painting or engraving, on paper, parchment, cloth, metal, wood, stone, or any other substance, with intent to circulate the same, any paper, essay, verses, pamphlet, books, painting, drawing, or engraving calculated to excite discontent, insurrection or rebellion amongst the slaves, or free persons of color, or if any person shall have in his possession with intent to circulate the same, any paper, essay, verses, pamphlet, book, painting, drawing or engraving as aforesaid, such person shall on conviction thereof be punished by imprisonment in the penitentiary for a term not less than ten years.

For circulat- incendiary papers, &c.

Section 4. If any person shall knowingly circulate, or shall aid or abet in circulating in this state, any paper, essay, verses, pamphlet, book, painting, drawing or engraving, whether, written, printed, drawn or engraved, on paper, parchment, cloth, metal, wood, stone or any other substance, and whether the same be written, printed, painted, drawn or engraved, within or out of this State, with the intent and calculated to excite discontent, insurrection or rebellion amongst the slaves or free persons of color, such person shall on conviction suffer death, or be imprisoned in the penitentiary not less than ten years, at the discretion of the jury trying the same.

Punishment for destroying property, &c.

Section 5. If any persons unlawfully assembled, shall demolish, pull down and destroy, or shall begin to demolish, pull down and destroy any dwelling house, or any other building, or any ship or vessel, he shall be punished by imprisonment in the penitentiary not less than two and not exceeding five years, or fined and imprisoned in the common jail, at the discretion of the jury trying the same.

CHAPTER THIRD.

Of Offences against the Persons of Individuals.

Homicide.

Murder in the first degree.

Section 1. Every homicide which shall be perpetrated by means of poison, lying in wait or by any other kind of wilful, deliberate, malicious and premeditated killing, or which shall be committed in the perpetration of, or in the attempt to perpetrate any arson, rape, robbery or burglary, shall be deemed murder in the first degree; so also, every homicide perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is slain, or perpetrated by any act eminently dangerous to the lives of others, and evincing a depraved mind regardless of human life, although without any preconceived purpose to deprive of life any particular individual; and every person guilty of murder in the first degree, shall on conviction suffer death or confinement in the penitentiary for life at the discretion of the jury trying the same.

Murder in the second degree.

Section 2. Every homicide committed under such circumstances as constitute the crime of murder at the common law, as is not embraced by murder in the first degree, as defined in the preceding section, shall be deemed murder in the second degree; and it shall be the duty of the jury before whom any person indicted for murder shall be tried, if they find the offender guilty, to ascertain by their verdict whether he be guilty of murder in the first or second degree; but if the accused upon arraignment shall confess his guilt, the court shall proceed by impanneling a jury, and the examination of testimony to determine the degree of the crime and to give sentence accordingly, and every person guilty of murder in the second degree, shall on conviction thereof be punished by imprisonment in the penitentiary for a period not less than ten years.

Manslaughter in the first degree.

Section 3. Every person convicted of the crime of manslaughter, by voluntarily depriving a human being of life, shall be deemed guilty of manslaughter in the first degree, and shall on conviction be punished by imprisonment in the penitentiary for a period not less than two and not exceeding ten years.

In the second degree.

Section 4. Every person convicted of manslaughter under any other circumstances than those expressed in the last section, shall be deemed guily of manslaughter in the second degree, and shall be fined in a sum not exceeding one thousand dollars, or imprisoned not exceeding six months, or both fined and imprisoned.

Killing of a slave murder in the first degree.

Section 5. If any person shall with malice aforethought, cause the death of a slave by cruel, barbarous or inhuman whipping or beating, or by any cruel or inhuman treatment, or by the use of any instrument in its nature calculated to produce death, such killing shall be deemed murder in the first degree.

Section 6. If any person being the overseer or manager of any slave or slaves, or having the right to correct such slave or slaves, shall cause the death of the slave by such barbarous, or inhuman whipping or beating, or by any other cruel or inhuman treatment, although without intention to kill, or shall cause the death of any such slave or slaves by the use of any instrument in its nature calculated to produce death, though without intention to kill, unless in self defence, such killing shall be deemed murder in the second degree.

Murder in the second degree.

Section 7. If any person being the owner of any slave or slaves, shall cause the death of the slave by cruel, barbarous, or inhuman whipping, or beating, or by any other cruel, or inhuman treatment, although without intent to kill, or shall cause the death of any such slave by the use of any instrument in its nature calculated to produce death, though without intention to kill, unless in self defence, or in use the of so much force as is necessary to procure obedience on the part of the slave, such killing shall be deemed murder in the second degree.

Killing of slave by owner murder 2d degree.

Section 8. If any person shall be guilty of fighting in the streets of any city or town, or at a militia muster, or other place public in itself, or made public by any assemblage of people, for any purpose whatever, and shall employ or use during such fight any fire arms, or air gun, by discharging (or attempting to discharge) the same, unless in self defence, such person shall, on conviction thereof be fined in a sum not less than one hundred nor more than five hundred dollars, or be imprisoned in the county jail for a term not exceeding six months, or both, at the discretion of the jury trying the offence.

Fighting in the streets, &c.

Section 9. When the killing in any sudden rencounter or affray shall be caused by the assailant, by the use of a deadly weapon, concealed before the commencement of the fight, his adversary having no deadly weapon drawn, such killing shall be deemed murder in the second degree, but the jury shall not be precluded from finding such person guilty of murder in the first degree.

Killing in sudden affrays murder second degree.

Section 10. If any person shall, within this State, kill another in fight, by single combat, commonly called a duel, with deadly weapons, such killing shall be deemed murder in the second degree.

Duelling.

Section 11. Every person who shall give, accept, or knowingly carry a challenge in writing or otherwise, to fight in single combat, with any deadly weapon, either in or out of this State, and be thereof convicted, shall be punishable by imprisonment in the penitentiary for two years.

For challenging, &c.

Section 12. Every person who shall hereafter, in this State, or in any other State of the United States, or in any territory or district thereof, give or accept a challenge to fight with any deadly weapon in single combat, shall be disqualified from holding or being eligible to be elected or appointed to any office whatever, under the constitution and laws of this State, and it shall not be necessary in any indictment under this section that a previous conviction for giving or accepting the challenge aforesaid shall have been had.

Disqualifications for duelling.

Offences in one county and death in another how prosecuted.

Section 13. If any mortal wound shall have been given, or other violence or injury shall be inflicted, or any poison shall be administered in one county, by means whereof death shall ensue in another county, the offence may be prosecuted and punished in either county, and if any such mortal wound shall be given or other violence; or injury shall be inflicted or poison administered on the high seas or on land, either within or without the limits of this State, by means whereof death shall ensue in any county thereof, such offence may be prosecuted and punished in the county where such death may happen.

Rape.

Section 14. Any person who shall commit the crime of rape and be convicted thereof, shall be punished by imprisonment in the penitentiary for life.

Crim. con. by circumvention.

Section 15. Every person who shall have carnal knowledge of any woman above the age of ten years without her consent, by administering to her any substance, either solid or liquid, which shall produce such stupor, or such imbecility of mind, or weakness of body, as to prevent effectual resistance, shall upon conviction, be punished by imprisonment in the penitentiary for life.

Proof.

Section 16. In prosecutions for rape, the act being shown to have been committed forcibly and against the consent of the woman, the proof of penetration shall be deemed sufficient evidence of the commission of the crime.

Females under 10 years.

Section 17. Every person who shall carnally know, or abuse in the attempt to carnally know, any female child under the age of ten years, shall, on conviction, be punished by imprisonment in the penitentiary for life.

Forcing a woman to marry, &c.

Section 18. Every person who shall take any woman unlawfully against her will, and by menace, duress or force, compel her to marry him, or to marry any other person, or to be defiled, and be thereof duly convicted, shall be punished by imprisonment in the penitentiary not less than seven years.

Females under 12 years of age.

Section 19. Every person who shall take any female under the age of twelve years, from her father, mother, guardian or other person, having the legal charge of her person, without their consent, either for the purpose of prostitution, concubinage or marriage, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for a term not less than two years.

Taking a child from parents.

Section 20. Every person who shall maliciously, forcibly, or fraudulently lead, take, or carry away, or decoy, or entice away, any child under the age of twelve years, with the intent to detain or conceal such child from its parent, guardian, or any other person having the lawful charge of such child, shall, upon conviction be punished by imprisonment in the penitentiary for a period not less than five years.

Penalty for sinking boat, &c.

Section 21. Every person navigating any boat or vessel for gain, who shall willfully receive so many passengers or such a quantity of other lading on board of such boat or vessel that, by means thereof such boat or vessel, shall sink or overset, and the life of any human being shall be endangered shall, upon conviction; be adjudged guilty of a misdemeanor and be fined in a sum not exceeding one thousand dollars, and may be imprisoned at the discretion of the jury, in the county jail not exceeding six months.

Steamboats.

Section 22. Whenever, hereafter, loss of human life, or injury to any human being, shall occur on board of any steamboat navigating the waters of this State, from the negligence or want of skill of the captain, engineer, or other officer or person engaged in the management of such steamboat, the officer or other person so causing such loss of life or injury, shall, on conviction be punished by imprisonment in the penitentiary, not less than two nor more than ten years.

Steamboat racing.

Section 23. If the captain or any other person having charge of a steamboat used for the conveyance of passengers, produce or merchandize, or if the engineer having charge of the boiler of such boat, or of any apparatus therein for the generation of steam, shall from ignorance or gross neglect, or for the purpose of excelling some other boat in speed, create or allow to be created, such an undue quantity of steam, as to bust or break the boiler, or other apparatus, in which such steam shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking, human life shall be endangered, every such captain, engineer or other person, shall be adjudged guilty of a misdemeanor and shall be confined in the penitentiary not less than two years.

Kidnapping.

Section 24. Every person who shall forcibly confine or imprison, or shall inveigle or kidnap any free person within this State, against his or her will, or shall forcibly cause any free person to be confined, or imprisoned in this State, against his or her will, with intent to remove such person without the limits of this State, without lawful authority for such removal; upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than three, nor more than ten years.

How tried.

Section 25. Every offence prohibited in the last section may be tried, either in the county in which the same may have been committed, or any county through which such person so kidnapped or confined, shall have been taken while under such confinement.

Selling a free person for a slave.

Section 26. Every person who shall be guilty of selling or buying any free person for a slave, knowing the said person so bought or sold to be free, and shall be thereof convicted, shall be punished by imprisonment in the penitentiary, for a term not less than ten years.

Bringing free persons in the State to sell.

Section 27. Every person who shall bring within this State, any free person, with intent to hold or dispose of such free person as a slave, knowing such person to be free, and shall be thereof convicted, shall be punished by imprisonment in the penitentiary for a term not less than two nor more than ten years.

Robbery.

Section 28. Any person who shall commit the crime of robbery, and be thereof convicted, shall be imprisoned in the penitentiary, for a term not less than ten years.

Mayhem.

Section 29. Every person, who from malice aforethought, shall cut out or disable the tongue, or put out or destroy an eye, cut or strike off an ear, cut or slit, mutilate or destroy the nose or lip, or cut, tear or strike off or disable a limb, or member of any other person, every such offender, and every person privy to such attempt, who shall be present, aiding in the commission of such an offence, shall be punished by imprisonment in the penitentiary, for a term not less than two, and not exceeding twenty years.

Assault with intent to kill.

Section 30. Every person who shall be guilty, and be thereof convicted, of an assault with an attempt to murder, main, rob or ravish, or shall attempt to poison any human being, or shall attempt to commit murder by any means which do not amount to an assault, shall be punished by imprisonment in the penitentiary for a term not less than two nor exceeding twenty years.

Assault with cowhide, &c.

Section 31. If any person shall assault and beat another, with a cowhide, stick or whip, and shall at the same time, have in his possession a pistol or other deadly weapon, with the intent to intimidate and prevent the person so beaten from defending himself, such person, shall on conviction, be sentenced to imprisonment in the penitentiary, for a term not less than two nor more than twenty years.

Lynching.

Section 32. All persons to the number of two or more, who shall abuse, whip, or beat, in the manner commonly called lynching, any person upon any accusation, real or pretended, or to force such person to confess himself guilty of any crime or offence, or to give evidence, or to compel such person to consent to leave the neighborhood or State, shall on conviction, be fined and imprisoned, one or both, at the discretion of the jury.

Injuring rail road, &c.

Section 33. Every person who shall wantonly and maliciously injure any rail road in this State, in use for the transportation of passengers, or shall wantonly and maliciously place thereon any impediment or obstruction, by means whereof the car or vehicle employed in such transportation, shall diverge or be thrown from the track of the road, shall on conviction, be imprisoned in the penitentiary, not less than two, nor more than five years.

CHAPTER FOURTH.

Of Offences against Public and Private Property.

Injuring or defacing penitentiary.

Section 1. If any person shall without lawful authority, willfully injure or deface the penitentiary, or any one of the buildings appurtenant thereto, used as a residence or lodging room, or room for consultation or deliberation, by the inspectors, warden or any other officer of the penitentiary, or any wall or railing inclosing the same, the person so offending, shall on conviction thereof, be fined in a sum not exceeding ten times the injury done: *Provided,* that the fine shall in no case be less than ten dollars.

Proviso.

Section 2. If any person shall willfully write or draw figures or characters on the walls of the State House of this State, such person so offending shall be adjudged guilty of a misdemeanor, and on conviction, shall be fined in a sum not less than ten dollars, nor more than one hundred dollars; and it shall be the duty of the person to whom the charge of the State House shall be committed by the Legislature, or if there be no such person appointed, it shall be the duty of the private secretary of the Governor, to cause this section to be printed and placed, and at all times kept upon the wall, in at least six public places, in the State House. Writing, &c. on State house.

Section 3. Every person who shall willfully injure or deface any court house, market house, jail, church, or other public buildings, without lawful authority, or any wall or fence inclosing the same, and be thereof convicted, shall be fined in a sum not exceeding ten times the injury done, but in no case shall the fine be less than ten dollars. Injuring court houses, public buildings, &c.

Section 4. If any person shall unlawfully, willfully and maliciously break, throw down, or destroy any fence or inclosure, or break, cut off, or carry away from its mooring or landing, or destroy any ferry boat, flat or canoe, belonging to any other person, every person so offending, shall on conviction of either of the aforesaid offences, be fined in a sum not less than five times the value of the property injured or destroyed; and on failing to pay the damages and costs, shall be imprisoned in the county jail, for a period not exceeding three months. Destroying fences, boats, &c.

Section 5. If any person shall unlawfully, willfully, and maliciously kill or disable any horse, mare or gelding, colt or filly, ass or mule, or any goat, sheep or cattle, or any hog, or live stock, of any kind or description whatever, belonging to any other person, or shall unlawfully, willfully or maliciously burn or otherwise destroy or injure any ricks or stacks of hay, fodder, pease or grain in the sheaf, or shall unlawfully, willfully or maliciously destroy or injure any cotton, corn or other article, or commodity of value, or any goods, wares or merchandise, or any timber or frame prepared for building, or any pile of wood, boards or lumber belonging to any other person, every person so offending shall on conviction of any of the aforesaid offences, be fined in a sum equal to five fold the value of the property injured or destroyed, and shall be imprisoned in the county jail for a term not exceeding six months. Maliciously killing stock, &c. Destroying grain, &c. Lumber.

Section 6. If any person shall cut, or burn off, or pull out the hair from the mane or tail of any horse, mare or gelding, colt, filly, ass or mule, belonging to any other person, with intent to disfigure such animal, or shall cut off the ear or tail of either of said animals, or shall willfully and mischievously in any other way injure or disfigure the same, with the intent aforesaid, every such offender shall on conviction, be fined in a sum not less than five times the injury supposed to be inflicted by such disfiguring, and imprisonment in the county jail not exceeding Disfiguring horses, &c.

six months; one or both at the discretion of the jury trying the offence.

Fines.

Section 7. The fine imposed in the three last preceeding sections for the offences therein mentioned, shall be paid to the party injured.

Cutting or destroying timber.

Section 8. Every person who shall willfully and maliciously commit any trespass, by cutting down or destroying any wood, or timber growing or standing upon the lands of any other person, or shall maliciously sever from the freehold any produce thereof, or any thing attached thereto, or shall sever and carry away from any freehold, any property or thing attached thereto, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away were personal property, he shall upon conviction be deemed guilty of a misdemeanor, and be punished by fine, and may be imprisoned in the county jail, in the discretion of the jury trying the same, according to the circumstances of the case; the fine not to exceed two hundred dollars, and the imprisonment not to exceed six months.

Removing land marks.

Section 9. Every person who shall willfully and maliciously remove any monuments of stone, wood or other durable material, erected for the purpose of designating the corner, or any other point in the boundary of any lot or tract of land, or shall willfully and maliciously deface or alter the marks upon any tree, post, or other monument, made for the purpose of designating any corner or other point in the boundary of any lot or tract of land, or shall willfully and maliciously cut down or remove any tree upon which any such mark shall be made, for the purpose aforesaid, shall upon conviction be adjudged guilty of a misdemeanor, and punished by a fine not less than fifty and not exceeding five hundred dollars, and may be imprisoned at the discretion of the jury in the county jail, not less than thirty days.

Mile posts.

Section 10. Every person who shall willfully and maliciously break, destroy, or remove, any mile stone, mile post or board, guide or finger board, erected upon any public highway or turnpike, or shall willfully and maliciously deface or alter any inscription upon such stone, post or board, shall upon conviction be adjudged guilty of a misdemeanor, and fined in a sum not less than ten and not exceeding fifty dollars.

Toll bridge, &c.

Section 11. Every person who shall willfully or maliciously destroy or materially injure, otherwise than by burning, any public or toll bridge, or any turnpike gate, shall upon conviction be adjudged guilty of a misdemeanor, and fined in a sum not less than fifty and not exceeding one thousand dollars, and be imprisoned in the county jail, at the discretion of the jury, for a term not exceeding six months.

Mill dam.

Section 12. Every person who shall unlawfully, willfully and maliciously destroy, or materially injure any mill dam, or other dam erected to create hydraulic power, or any embankment necessary to support such dam, shall upon conviction be adjudged guilty of a misdemeanor, and fined in a sum not less than fifty and not exceeding one thousand dollars, and may be imprisoned at the discretion of the jury, in the county jail, for a term not exceeding six months.

Poisoning waters.

Section 13. Every person who shall wilfully and wantonly poison any spring, fountain, well, or reservoir of water, shall, upon conviction, be punished by imprisonment in the penitentiary not less than three, and not exceeding ten years.

Harboring runaways.

Section 14. Every person who shall harbor or conceal any runaway slave or slaves, or fugitives from their masters, or other person having charge of them, knowing that they are such, such person, so offending, shall, on conviction, be fined not less than one hundred, and not more than one thousand dollars; or be imprisoned in the penitentiary not more than two years, at the discretion of the jury trying the same.

Aiding runaways.

Section 15. Every person who shall knowingly aid any negro or other slave to run away, or depart from his master's service, such person, so offending, on conviction, shall suffer imprisonment in the penitentiary not less than two, and not exceeding five years.

Decoying off slaves.

Section 16. If any person shall, directly or indirectly, persuade or induce any slave to leave his, her or their master or mistress's service, with the intent and design to depart or escape to some other country, where such slave may enjoy his or her freedom, or shall harbor or conceal such slave, with a knowledge of the intent of such slave to depart to such state or country, such person shall, on conviction, be punished by imprisonment in the penitentiary for a period not less than five, and not exceeding fifty years.

Forging passes, &c.

Section 17. If any person shall forge the name of the owner or manager of any slave, or shall sign the name of any such owner or manager, to any pass or permit, with the intention to enable such slave to escape, or run away from his owner or manager; or shall forge or fabricate any paper or document, to enable such slave to pass as a free person, or with intent to enable such slave to escape from the State, such offenders shall, on conviction, be punished by imprisonment in the penitentiary for a term not less than five, nor more than twenty years.

Carrying away slaves, &c.

Section 18. Every person who shall inveigle, steal, carry, or entice away, any slave, without the consent of such slave, or shall hire, aid, or counsel any person to inveigle, steal, carry, or entice away as aforesaid, any such slave, with a view to convert such slave to his own use, or the use of any other person, or to enable such slave to reach some other state or country, where such slave may enjoy freedom, such person shall, on conviction, be punished by confinement in the penitentiary not less than ten years.

Fraudulent conveyances.

Section 19. Every person who shall make or receive any conveyance, deed, or other writing of real or personal property, with intent to delay, hinder, and defraud creditors, shall, on conviction, be fined not less than fifty, nor more than one thousand dollars;

and may, at the discretion of the jury, be imprisoned in the county jail for a period not exceeding six months.

Removing mortgaged property.

Section 20. Every person who shall remove, or cause to be removed, or aid in the removal, beyond the limits of this State, of any slave or other personal property, mortgaged or conveyed by deed of trust, or deed, or written instrument, in the nature of a mortgage or deed of trust, with a knowledge of the execution of such instrument, and with intent to hinder, delay, or defraud, any person claiming under such deed or instrument, shall, on conviction, be punished by imprisonment in the penitentiary for a term not less than two, and not exceeding five years; to authorize a conviction under this section, it shall not be necessary to prove that a slave or other property was carried beyond the limits of the State, where it is shown that the party charged, began to remove the slave or other personal property, with intent to carry the same beyond the limits of the State, and was prevented from so doing, either by the slave or other property escaping, or being taken from his possession, before he consummated his intention; *Provided, however*, if it shall appear that the person so removing, or causing the removal, was an honest purchaser of the same, and only removed it, or caused its removal, with the intent aforesaid, he shall be imprisoned in the penitentiary for a term of two years, and no longer.

Proof.

Proviso.

False bills of lading.

Section 21. If the owner of a ship or vessel, or of any property, laden, or pretended to be laden, on board the same, or if any other person concerned in the lading, or fitting out of any such ship or vessel, shall make out and exhibit, or cause to be made out and exhibited, any false or fraudulent invoice, bill of lading, bill of parcels, or other false estimate of any goods or property, laden, or pretended to be laden on board of such vessel, with intent to injure or defraud the insurer of any such vessel or property, or any part thereof, he shall be punished by imprisonment in the penitentiary not less than two, and not exceeding five years.

False affidavit or protest.

Section 22. If any master, or other officer, or mariner of any ship or vessel, shall make or cause to be made, or shall swear to any false affidavit or protest, or if any owner or other person concerned in such vessel, or in the goods or property laden on board of the same, shall procure any such false affidavit or protest to be made, (or shall exhibit the same, with intent to injure, deceive, or defraud, any insurer of such ship or vessel, or other goods or property, laden on board the same,) he shall be punished by imprisonment in the penitentiary not less than two, and not exceeding five years.

Destroying or casting away vessels, &c.

Section 23. If any person shall willfully cast away, burn, sink, or otherwise destroy, any ship or vessel, within the body of any county, with the intent to injure or defraud the owner of such vessel, or the owner of any property laden on board of the same, or any insurer of such vessel or property, or any part thereof, he shall be punished by imprisonment in the penitentiary for a period not less than five, nor more than ten years.

Section 24. Every person who shall willfully burn a building, or any goods, wares, merchandise, or chattels, which shall be at the time insured against loss or other injury by fire, with intent to charge or injure the insurer, such offender, whether he be the owner of the property burnt or not, shall be punished by imprisonment in the penitentiary for a term not less than five, and not exceeding ten years.

Burning property insured.

Section 25. Every person who shall fraudulently or feloniously steal the property of another, in any other state or country, and shall bring the same within this State, may be convicted and punished in the same manner as if such larceny had been committed in this State; and in every such case, such larceny may be charged to have been committed in any county, in or through which, such stolen property may have been brought.

Stealing property in other States, &c.

Section 26. Every person prosecuted under the last section, may plead a former conviction or acquital for the same offence, in another State or country; and if such plea be admitted or established, it shall be a bar to any further or other proceedings against such person for the offence committed, in this State.

May plead former trial.

Section 27. If any person shall wilfully and feloniously mark or brand with a mark or brand, any unmarked or unbranded horse, mare, colt, mule, ass, bull, cow, bullock, ox, heifer, calf, hog, sheep or goat, knowing the same not to be his or her own property, and with intent to convert the same to his or her own use, the person so offending shall be deemed guilty of larceny, and receive the punishment provided for that offence, according to the value of the property thus marked or branded.

Marking or branding stock.

Section 28. If any person shall wilfully and feloniously alter or deface the mark or brand of any horse, mare, colt, mule, ass, bull, cow, ox, bullock, heifer, calf, hog, sheep or goat, knowing the same not to be his or her own property, or with intent to convert the same to his or her own use, the person so offending shall be deemed guilty of larceny, and receive the punishment provided for that offence, according to the value of the property, the mark or brand of which was thus altered or defaced.

Altering marks or brands.

Section 29. Every person who shall falsely represent or personate another, and in such assumed character, shall receive any money or other valuable property of any description, intended to be delivered to the person so personated, shall, upon conviction thereof, be punished in the same manner and to the same extent, as if he had feloniously stolen the money or property so received.

Falsely personating another.

Section 30. Every person who shall, designedly, by any false pretence, or by any privy or false token, with intent to defraud another, obtain from any person, any money, personal property, or other valuable thing, or shall obtain, with such intent, the signature of any person to any written instrument, the false making whereof shall be forgery, upon conviction thereof, such person shall be punished by imprisonment in the penitentiary, not less than two years, and not exceeding five.

Obtaining money, &c. by false pretences.

Officer, agent, &c, embezzling money, &c.

Section 31. If any officer, agent or clerk, of any incorporated company, or if any clerk or agent of any private person, or of any copartnership, except apprentices and other persons under the age of eighteen years, shall embezzle or fraudulently convert to his own use, without the consent of his employer or master, any money or property of another, which shall have come to his possession, or be under his care by virtue of such employment, he shall be deemed, by so doing, to have committed the crime of larceny, and punished accordingly.

Carrier, &c. embezzling.

Section 32. If any carrier, whether by water or land, or other person, to whom any money or other property, which shall be the subject of larceny, shall have been delivered to be carried for hire, shall embezzle or fraudulently convert to his own use, or shall secrete with intent to embezzle or fraudulently to convert to his own use, any such money or other property, either in the mass, as the same was delivered or otherwise, he shall, by such breach of trust, be deemed to have committed the crime of larceny, and punished accordingly.

Officers of banks embezzling.

Section 33. If any president, cashier or other officer, agent or servant of any bank incorporated by the Legislature of this State, shall embezzle or fraudulently convert to his own use, or shall fraudulently secrete with intent to convert to his own use, any gold or silver money, note, bill, obligation or security, or any other effects or property, belonging to, or in possession of such bank, or belonging to any person, and deposited therein, he shall be deemed by so doing, to have committed the crime of larceny, and shall be punished as larceny is directed to be punished in this chapter.

State Treasurer or clerk embezzling.

Section 34. If the treasurer, his clerk or other person employed in the treasury of this State, shall commit any embezzlement therein, he shall be deemed guilty of larceny, and punished as that offence is directed to be punished in this chapter.

Proof.

Section 35. In any prosecution for the offence of embezzling the money, bank bills, notes, checks, drafts or bills of exchange, or other evidences of debt or securities for money of any person, against the provisions of this chapter, it shall be sufficient to allege generally, in the indictment, an embezzlement of money, bank bills, notes, checks, drafts, bills of exchange, or other evidences of debt or securities for money, of or about a certain sum or amount, without specifying any particulars of such embezzlement, or a particular description of the money, bank bills or other security, charged to have been embezzled; and on the trial, evidence may be given of any embezzlement within the times mentioned in the indictment.

Buying embezzled property.

Section 36. Every person who shall buy, or in any way receive, any money or property, knowing the same to have been embezzled or secreted, contrary to the provisions of the foregoing sections relating to embezzlement, with intent to prevent their recovery, or to defraud the rightful owner, shall, upon conviction, be punished in the same manner, and to the same extent, as is prescribed in said sections, upon a conviction for embezzlement.

Section 37. Every person who shall make, alter, forge or counterfeit, any note, certificate or other evidence of debt, issued by any officer authorized to issue the same, or any bank bill, or promissory note, draft or check, payable to the bearer thereof, or to the order of any person, issued by any incorporated bank or banking company of this or any other State, district or territory of the United States, or any note, certificate, draft, check or other evidence of debt, issued by authority of any law of the United States, with intent to injure or defraud any corporation, government or individual, shall be deemed guilty of forgery in the first degree.

Offences declared forgery in the first degree.

Section 38. Every person who shall falsely make, alter, forge or counterfeit, any check, draft, bill or warrant, drawn on any bank or banking company, or upon the treasurer of this State, with intent to injure or defraud any person, corporation, or State, shall also be deemed guilty of forgery in the first degree.

Forgery—1st degree.

Section 39. Every person who shall falsely make, alter, forge or counterfeit any will of real or personal estate, or any deed, or other instrument, being or purporting to be the act of another, by which any right or interest, or any real property shall be or purport to be transferred, conveyed, or any way charged or affected; any certificate of the indorsement or acknowledgment by any person of any deed or other instrument, which by law may be recorded, made or purporting to be made by any officer duly authorized to make such certificate or endorsement; or any certificate to the proof of any deed, will, or other instrument, which by law, may be recorded, made or purporting to have been made by any court or officer, duly authorized to make such certificate, with intent to injure or defraud, shall be deemed guilty of forgery in the first degree.

1st degree.

Section 40. Every person who shall utter, or pass, or tender in payment as true, any false, altered, forged or counterfeit bank bill, or any one of the instruments, securities, or evidence of debt specified in the two preceeding sections, knowing the same to be false, altered, forged or counterfeit, with intent to defraud or injure as aforesaid, shall be deemed guilty of forgery in the first degree.

1st degree.

Section 41. Every person who shall be convicted of having forged, counterfeited, or falsely altered the seal of this State, or the seal of any public office authorized by law; the seal of any court of record‘ or the seal of any bank or banking company, duly incorporated by the laws of this State; or who shall falsely make, forge, or counterfeit, any impression purporting to be the impression of any such seal, with intent to defraud, shall be deemed guilty of forgery in the second degree.

Forgery—2d degree.

Section 42. Every person who shall be convicted of falsely altering, destroying or falsifying any record of any will, conveyance or other instrument, the record of which shall by law, be evidence, or any record of any judgment or decree, in a court of record, either

2d degree.

of law or equity, the return of any officer, to the process of any court, with intent to defraud, shall be deemed guilty of forgery in the second degree.

Forgery—2d degree. Section 43. Every person who shall falsely make, alter, forge, or counterfeit, any bond, bill single, promisory note, bill of exchange, or the acceptance of any bill of exchange, or the indorsement of any bond, bill single, promissory note, or bill of exchange, or any cotton receipt, or receipt for the payment of money, or any other thing, shall, on conviction, be deemed guilty of forgery in the second degree.

2d degree. Section 44. If any officer authorized to take the proof or the acknowledgment of any conveyance of real estate, or of any other instrument, which by law may be recorded, shall wilfully and maliciously certify that any such conveyance or instrument was acknowledged by any party thereto, when in truth, no such acknowledgment was made, or that any such conveyance or instrument was proved, when in truth, no such proof was made, or that such acknowledgment or proof was made, on a day other or different from the day in which it was in truth made, with the intent to injure or defraud, or with the intent to enable another person to injure or defraud, in either case, the offender shall, upon conviction, be deemed guilty of forgery in the second degree.

2d degree. Section 45. Every person who shall be convicted of having counterfeited any of the gold or silver coin, which shall be at the time current by law, usage or custom, within this State, shall be deemed guilty of forgery in the second degree.

2d degree. Section 46. Every person who shall be convicted of having made or engraved, or having caused or procured to be made and engraved, any plate in the form or similitude of a promissory note, bill of exchange, draft, check, certificate of deposit, or evidence of debt, isssued by any incorporated bank, or banking company within this State, or of any State, district or territory of the United States, without the authority of such bank; or having or keeping in his custody or possession, without the authority of such bank, any impression taken from any such plate, with intent to have the same filled up and completed, for the purpose of being passed, sold or uttered; and of having made or caused to be made, or having in his custody or possession, any plate on which shall be engraved any figures or words, which may be used for falsely uttering any evidence of debt issued by any incorporated bank or banking company, with the intent of having the same used for such purpose, shall be deemed guilty of forgery in the second degree.

Explanatory. Section 47. Every plate specified in the last section shall be deemed to be in the form and similitude of the instrument imitated, when the engraving on such plate resembles or conforms to such parts of the genuine instrument as are engraved.

3d degree. Section 48. All forgeries, the punishment of which is not provided for in any of the preceeding sections, shall be deemed forgery in the third degree.

Section 49. Every person who shall be convicted of having uttered and published as true, and with intent to defraud, any forged, altered or counterfeit instrument or other writing, or any counterfeit gold or silver coin, the forging, uttering or counterfeiting of which is declared by this chapter to be an offence, knowing such instrument or coin to be forged or counterfeited, shall suffer the punishment herein before assigned, for the forging, uttering or counterfeiting the instrument or coin so uttered; but if it shall appear on the trial of the indictment, that the accused received such forged, altered, or counterfeit instrument, or other writing, or gold or silver coin, of another person in good faith, and for a valuable consideration, without any circumstances to justify a suspicion of its being forged or counterfeited, and he afterwards acquire a knowledge of its spuriousness, and shall utter and publish the same as true, he shall be deemed guilty only of forgery in the third degree, and punished accordingly.

Counterfeit paper or coin.

Proviso.

Section 50. Forgery in the first degree, shall be punished by imprisonment in the penitentiary, for a period not less than ten, and not exceeding twenty years: Forgery in the second degree, shall be punished by imprisonment as aforesaid, for a term not less than five, and not exceeding ten years: And forgery in the third degree, for a period not less than two, and not exceeding five years.

Penalty for forgery in the first degree defined.

2d degree.

3d degree.

Section 51. The total alteration or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest or claim to property, shall be intended to be created, increased, discharged, diminished, or in manner affected, shall be deemed forgery in the same manner and in the same degree, as the false alteration of any part of such instrument or writing.

What deemed forgery.

Section 52. Every instrument partly printed and partly written, with a written signature thereto, and every signature of an individual, firm, or corporate body, or of any officer of such body, and every writing purporting to be such signature, shall be deemed a writing, and a written instrument, and may be the subject of forgery in the meaning of the provisions of this chapter; and where different parts of several genuine instruments shall be so placed or connected together as to produce one instrument, with intent to defraud, the same shall be deemed forgery in the same manner and in the same degree, as if the parts so put together were falsely made or forged.

What deemed a written instrument.

Section 53. If any person shall make, forge or counterfeit, with intent to defraud, any evidence of debt issued, or purporting to have been issued, by any corporation having authority for that purpose, to which shall be affixed the printed signature of any person as agent or officer of such corporation, it shall be deemed forgery in the same degree, and in the same manner as if such person was at the time an officer or agent of such corporation; notwithstanding there never was any such person in existence.

Forgery of evidence of debt.

Indictment for forgery.

Section 54. Wherever by any of the forgoing provisions an attempt to defraud is required to constitute forgery, it shall be sufficient if such intent appear to defraud the United States, any State or Territory thereof, any body corporate, any county, city, town or village, or any public officer in his official capacity, any copartnership, or any one of such partners, or any person whatever; and it shall be sufficient to alledge in the indictment an intent to defraud, without naming therein the particular person, State, government, or body corporate, intended to be defrauded.

Larceny.

Section 55. Every person who shall enter any dwelling house, store house, smoke house, kitchen, stable, shop, warehouse, steamboat, ship or other water craft, and therein commit the crime of larceny, and shall be thereof convicted, shall be punished by imprisonment in the penitentiary not less than three nor more than six years.

Larceny.

Section 56. Every person who shall commit the crime of larceny by stealing from any building that is on fire, or by stealing any property removed in consequence of an alarm caused by fire, or by stealing from the person of another, shall be punished by imprisonment in the penitentiary not less than three nor exceeding six years.

Grand larceny defined.

Section 57. Every person who shall commit the offence of larceny, by stealing any money, goods or chattels, or any bank note, bond, promissory note, bill of exchange, or other bill, order, or any deed or writing, containing a conveyance of land, or other property, or any other valuable contract in force, or any writ, process, or public record, or any other evidence of debt, or any public security of the United States, or of this State, if the property stolen shall exceed the value of twenty dollars, shall be deemed guilty of grand larceny, and punished by imprisonment in the penitentiary not less than two nor exceeding five years.

Petit larceny.

Section 58. Every person who shall commit the offence of larceny, by stealing any money or other thing made the subject of larceny by the preceeding section, when the property stolen shall be of the value of twenty dollars, or less, shall be deemed guilty of petit larceny, and punished by imprisonment in the county jail, not exceeding three months, and fined not more than one hundred dollars; and for the second offence shall be committed to the penitentiary for the term of two years.

Jury's duty on conviction of larceny.

Section 59. Whenever a jury shall find the accused guilty of larceny, it shall be their duty to ascertain the precise value of each article stolen, and the court trying the offender shall render judgment against him in favor of the owner for the assessed value, unless such stolen property has been or shall be returned.

Stolen goods.

Section 60. Every person who shall buy, receive, conceal, or aid in the concealment of any of the subjects of larceny mentioned in the preceding sections, knowing the same to have been stolen, and with intent to defraud the owner, and be thereof convicted, shall be imprisoned in the penitentiary not less than two nor more than five years.

Abettors may be indicted.

Section 61. It shall be competent to indict for the offence of buying, concealing, receiving, or aiding in the concealment of money, or other property, although the principal offender may not have been tried or convicted.

Stealing horses, &c.

Section 62. If any person shall feloniously steal, or take away, any horse, mare or gelding, foal or filly, ass or mule, the person so offending shall upon conviction, be punished by imprisonment in the penitentiary not less than three and not exceeding seven years; and in an indictment for such larceny, it shall not be necessary to designate the particular sex or character of the animal stolen, but it shall be enough to describe it by such general designation, as, in common understanding of mankind, embraces it.

Indictment.

Buying stolen horses, &c.

Section 63. If any person or persons shall receive or buy any horse, mare, or gelding, foal or filly, ass or mule, that shall have been feloniously taken or stolen from any other person, knowing the same to have been stolen, with intent to defraud the owner, he shall be punished in the same manner as the principal thief.

Burglary.

Section 64. Every person who shall commit the crime of burglary, and be thereof convicted, shall be punished by imprisonment in the penitentiary for a term not less than three, nor more than fifty years.

Arson—first degree defined.

Section 65. Every person who shall willfully and maliciously, and with an intent to destroy human life, set fire to, or burn in the night, a dwelling house or house adjoining thereto, in which dwelling house there shall be, at the time, some human being, shall be deemed guilty of arson in the first degree; and every house, prison, or other edifice, which shall be occupied by persons lodged therein at night, shall, within the meaning of this section, be considered a dwelling house.

2d degree.

Section 66. Every person who shall willfully and maliciously set fire to, or burn, in the day time, any inhabited dwelling house, which, if committed in the night time, would be arson in the first degree, shall, upon conviction, be adjudged guilty of arson in the second degree, and every person who shall willfully and maliciously set fire to, or burn, any meeting house, church, court house, town house, college, academy, jail, or other building, erected for public use, or any banking house, warehouse, cotton house, gin house, store, manufactory, or mill, being, with the property therein contained, of the value of five hundred dollars; or any barn, stable, shop, or office, of another person, within the curtilage of any dwelling house, or any other building, by the burning whereof any building mentioned in this section shall be burnt, such offender shall be adjudged guilty of arson in the second degree.

3d degree.

Section 67. Every person who shall willfully and maliciously set fire to, or burn, any other house or out house, other than those mentioned in the preceding sections, any bridge, lock, steamboat, keelboat, ship, or other water craft, lying within the body of any county, such as is used either in ascending or descending our rivers, or for the purpose of transporting produce, merchandise, or any other thing, either in ascending or descending our rivers, or upon other navigable water within this State, shall be deemed guilty of arson in the third degree.

Arson—punishment defined.

Section 68. Arson in the first degree shall be punished by imprisonment in the penitentiary for a term not less than fourteen years; arson in the second degree shall be punished by imprisonment in the penitentiary for a term not less than seven, and not exceeding fourteen years; and the third degree of that offence shall be punished by imprisonment as aforesaid, for a period not less than three, and not exceeding seven years.

Injuring rail roads.

Section 69. Every person who shall wantonly injure, or place any impediment, or obstruction, on any rail road in this State, in use for the transportation of passengers or merchandise, and be thereof convicted, shall be fined not less than one hundred, nor more than five hundred dollars, and may also be imprisoned not exceeding three months.

Obstructions.

Section 70. Every one who shall negligently place any impediment, or obstruction, on any rail road in this State, in use for the transportation of passengers or merchandise, and be thereof convicted, shall be fined, not less than fifty nor more than two hundred dollars.

CHAPTER FIFTH.

Of Offences against Public Justice.

Perjury defined.

Section 1. Every person who shall wilfully and corruptly swear or affirm falsely, in regard to any material matter or thing upon any oath, or affirmation, which shall be required or authorized by law, shall be deemed guilty of perjury.

Perjury committed on trial of capital offences.

Under other circumstances.

Section 2. Every person charged with perjury committed on the trial of any indictment for a capital offence, or for any other felony, shall, on conviction thereof, be punished by imprisonment in the penitentiary, for a period, not less than seven, nor exceeding twenty years; and perjury committed under any other circumstances, or upon any other occasion, shall be punished by imprisonment in the penitentiary, for a term not less than two, nor exceeding five years.

Subornation of perjury.

Section 3. Every person who shall unlawfully and corruptly procure another to swear falsely, in any case or upon any occasion, in or concerning which perjury may be committed, such person shall be adjudged guilty of subornation of perjury, and on conviction thereof, shall be punished, by imprisonment in the penitentiary, for the period for which the party suborned was liable to be imprisoned.

Bribery of Executive, Legislative and Judicial officers.

Section 4. Every person who shall corruptly promise or give to any executive, legislative or judicial officer, after his election or appointment, either before or after he shall have been qualified, or shall have taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgment, on any matter, cause or proceeding, which may be then pending, or may by law, come or be brought before him, in his official capacity, shall be punished by imprisonmant in the penitentiary, not less than two, and not exceeding ten years.

Bribery of Executive, &c.

Section 5. Every executive, legislative or judicial officer, who shall corruptly accept any gift or gratuity, or any promise to make any gift, or to do any act beneficial to such officer, under an agreement, or with an understanding, that his vote, opinion or judgment, shall be given in any particular manner, or upon any particular side of any question, cause or proceeding, which is or may be by law brought before him in his official capacity; or if in such capacity, he shall make any particular appointment, shall be punished by imprisonment in the penitentiary, not less than two, and not exceeding ten years.

How punished.

Section 6. Every person who shall corrupt any of the ministerial officers of the courts of law or chancery, any auditor, juror, arbitrator, umpire or referee, by giving, offering or promising any gift or gratuity whatever, with intent to bias the mind or influence the decision of such ministerial officer of the courts of law or chancery, any auditor, juror, arbitrator, umpire or referee, in relation to any cause or matter, which is pending in either of said courts, or before any inquest for the decision of which such arbitrator, umpire or referee, shall have been chosen or appointed, shall be punished by imprisonment in the penitentiary, not less than two, and not exceeding five years; in order to the conviction of the pary charged with corrupting a juror as aforesaid, it shall not be necessary that such juror should actually have been sworn or qualified, but shall be sufficient if such juror, shall have been summoned upon a writ issued for that purpose, under the authority of law, or otherwise under legal authority to attend the court.

Corrupting ministerial officers, jurors, &c.

Section 7. If any person summoned as a juror, or appointed an auditor, arbitrator, umpire or referee, or if any ministerial officer, either in the courts of chancery or law, shall corruptly take any thing to give his verdict, award or report, or shall corruptly receive any gift or gratuity whatever, he shall be punished by imprisonment in the penitentiary, not less than two, and not exceeding five years.

Bribing jurors, &c.

Section 8. If any sheriff or other officer, intrusted by law with a discretion in summoning jurors, shall, whether by agreement or otherwise, with any party to any cause pending in court, or with his agent or attorney, summon any juror, with intent to produce a result favorable to either party, such sheriff, or other officer, shall, on conviction thereof, be punished by imprisonment in the penetentiary, not less than two, and not exceeding five years.

Sheriff acting corruptly, &c

Section 9. If any person shall, by any promise, gift or gratuity, induce any sheriff, or other officer, to summon a juror or a jury, with a view to produce a result favorable to either party, in any cause pending in any circuit or county court, or other tribunal,

Bribery of sheriff.

such person shall be as guilty as the sheriff, coroner or other officer, would be, and punished by imprisonment in the penitentiary, for a term not less than two, and not exceeding five years.

Sheriff or coroner conniving, &c.

Section 10. Any sheriff, or in the event of a vacancy in the office of sheriff, the coroner, who shall be privy to, and connive at the commission of the offence described in the two preceeding sections, by any bailiff attending the court, or by any deputy sheriff, shall be deemed as guilty as the principal offender, and receive the punishment prescribed as aforesaid.

Personating another in becoming bail, &c.

Section 11. Every person who shall falsely personate another, and in such assumed character, become bail, or surety for any party in any proceeding, civil, or criminal, before any court, or officer, authorized to take such surety, or confess any judgment, or acknowledge the execution of any conveyance, or of any other instrument which by law may be recorded, or do any other act, in the course of any suit, proceeding or prosecution, whereby the person so represented or personated, may be made liable in any event, for the payment of any debt, damages, costs, or sum of money, or his rights or interests in any way be affected, shall, upon conviction, be punished by imprisonment in the penitentiary, for a period, not less than two, and not exceeding ten years.

Sheriff, &c. suffering escapes.

Section 12. If any sheriff, jailer, coroner, constable or other officer, or other person, having the legal custody of any person, charged with or convicted of a criminal offence, shall voluntarily suffer and permit the person so charged or convicted, to escape, he shall, on conviction, be punished by imprisonment in the penitentiary, not less than two, and not exceeding twenty years.

Negligence.

Section 13. If any sheriff, jailer, constable, coroner or other officer, shall, through negligence, suffer any prisoner, in his custody, upon a conviction, or upon any criminal charge, to escape, he shall, on conviction, be fined not less than two hundred and not exceeding one thousand dollars.

Refusing to execute process.

Section 14. If any sheriff, jailer, coroner, or constable, shall willfully and corruptly refuse to execute any lawful process, directed to them or any of them, requiring the apprehension or confinement of any person charged with a criminal offence, or shall willfully and corruptly omit to execute such process, by which such person shall escape, or shall willfully and corruptly refuse to receive in any jail under his charge, any offender lawfully committed to such jail, and ordered to be confined therein, on any criminal charge or conviction, or on any lawful process whatever, he shall be punished by fine, not less than five hundred, and not more than two thousand dollars.

Refusing to receive prisoners.

Section 15. If any jailer or other officer, shall willfully refuse to receive into his custody any prisoner, lawfully committed thereto on any criminal charge, or conviction, or on any lawful process on any criminal charge whatsoever, and be thereof convicted, he shall be fined in any sum not exceeding five hundred dollars.

Section 16. Every person who shall convey into any county jail, or other place of confinement, other than the penitentiary, any disguise, instruments, arms, or other thing, useful to aid any prisoner in his escape, with intent thereby to facilitate the escape of any prisoner, lawfully committed to or detained in such jail, or other place, for any felony whatever, whether such escape be effected, or attempted or not, shall, upon conviction, be punished by imprisonment in the penitentiary, not less than two, and not exceeding ten years; and every person who shall, by any act done, aid, or assist any prisoner, lawfully detained in any county jail, or other place of imprisonment, as aforesaid, for any felony, to escape therefrom, whether such escape be effected or not, shall, upon conviction, be punished by imprisonment, as above provided in this section.

Penalty for conveying instruments, &c to prisoners committed for felony.

Section 17. Every person who shall by any act done, aid or assist any prisoner lawfully committed to any county jail, or other place of confinement, or in execution of a conviction for any offence other than a felony, whether such escape be effected or not, or who shall convey into such jail, or place of confinement, any disguise, instrument, arms, or other thing, useful to facilitate the escape of any prisoner so committed, with intent to facilitate his escape, whether such escape be effected, or attempted, or not, shall be punished by fine not exceeding one thousand dollars.

For other offences.

Section 18. Every person who shall by any act, aid or assist any prisoner in escaping or attempting to escape, from the custody of any sheriff, coroner, constable, or other officer or person, who shall have the lawful charge of such prisoner, upon any criminal charge or conviction, shall upon conviction, be punished in the same manner as if he had aided or assisted in an escape, or attempt to escape, from the county jail: *Provided*, that if the party escaping, or attempting to escape, was in custody under a charge of any capital offence, or on conviction for such offence, the person aiding or assisting his escape, or attempt to escape, shall be punished by imprisonment in the penitentiary, for a period not less than two, and not exceeding fourteen years.

Aiding in escapes.

Proviso.

Section 19. If any prisoner confined in a county jail, upon a conviction for a criminal offence, shall escape therefrom, he may be pursued, retaken, and imprisoned again, notwithstanding the term for which he was sentenced to be imprisoned may have expired, at the time when he shall be retaken, and he shall remain so imprisoned, until he be discharged by a due course of law, and the period elapsing between his escape and arrest, shall not be computed as a satisfaction *pro tanto*, of the term for which he was sentenced to imprisonment.

Penalty for prisoners escaping.

Section 20. If any person or persons, shall knowingly and wilfully resist or oppose any officer of this State, in serving or attempting to serve, or execute, any legal writ or process whatsoever, he shall on conviction thereof, be fined not less than fifty and not exceeding one thousand dollars.

Resisting process, &c.

Concealing slaves guilty of capital offences.

Section 21. Every master or other person, having in charge a slave, guilty of any capital crime, who shall conceal, or cause to be concealed, or carry away, or cause to be carried away, such slave, such master or other person having him in charge, being informed of the commission of such crime, and intending by the concealment or carrying away of such slave, to prevent him from being brought to justice; and every master or other person having in charge a slave, who shall conceal, or cause to be concealed, or carry away or cause to be carried away, such slave, charged with the commission of a capital crime, shall on conviction of either of the foregoing offences, be fined in the sum of one thousand dollars, or imprisoned in the penitentiary, not less than two years, at the discretion of the jury trying the same.

Misprision of felony.

Section 22. Every person having a knowledge of the commission of an offence, punishable by death, or by imprisonment in the penitentiary, who shall take any money, or property of another, or any gratuity or reward, or engagement or promise therefor, upon any agreement or understanding, express or implied, to compound, or conceal any such crime, or to abstain from any prosecution therefor, shall upon conviction, be fined in a sum not exceeding two thousand dollars.

Conspiracy to indict another maliciously.

Section 23. If two or more persons shall conspire either to commit any offence, or falsely and maliciously to indict another for an offence, or to procure another to be charged or arrested for any offence, or falsely to move or maintain any suit, or to cheat and defraud any person of any property by any means in themselves criminal, or to cheat and defraud any person of any property, by any means which would amount to a cheat, or to obtain any money or property by false pretences, or to commit any act injurious to the public health, to public morals, to trade or commerce, or for the perversion or obstruction of justice, or the due administration of the laws, they shall upon conviction, be deemed guilty of a misdemeanor, and be punished by fine or imprisonment in the county jail, or both, according to the circumstances of the case; but the fine in no case, shall exceed one thousand dollars, and the imprisonment in no case, shall exceed six months.

Conspiracy defined.

Section 24. No agreement, except to commit a felony upon the person of another, or to commit the crime of arson in the first degree, or burglary, shall be deemed a conspiracy, unless some act besides such agreement be done to effect the object thereof.

Explanation.

Section 25. No other conspiracies than such as are enumerated in the two sections last preceding, shall be punished criminally.

Justices, &c. taking extra fees.

Section 26. If any justice of the peace, clerk, sheriff, or other officer, authorized by the laws of this State to receive fees or perquisites for services rendered by him in his official capacity, shall knowingly take other or greater fees than are by law allowed for any service done or to be done by him, or shall demand and take any fees for services not actually rendered, or to be rendered, the officer so offending, shall be deemed guilty of extortion, and on conviction, shall be fined in a sum not less than twenty, nor more than five hundred dollars.

Refusing to assist justices of the peace.

Section 27. If any jnstice or conservator of the peace, upon view of any breach of the peace, or any other offence proper for his cognizance, shall require any person to apprehend and bring before him the offender, every person so required, who shall refuse or neglect to obey such justice or conservator of the peace, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not less than fifty, and not exceeding three hundred dollars; and every one assaulting and beating, or resisting such person acting in obedience to the the command of such justice or conservator of the peace, with a knowledge of such command, shall be guilty in the same manner as if he had assaulted and beat, or resisted an officer in serving or executing legal process, and, on conviction of either of these offences, shall receive the punishment thereto annexed by the preceding provisions of this chapter.

CHAPTER SIXTH.

Of Offences against the Public Morals.

Cruel and inhuman punishment of slaves, &c.

Section 1. No cruel or unusual punishment shall be inflicted on any slave, and any master or other person having charge of a slave, who shall be guilty of inflicting such punishment, or authorizing or permitting the same, shall be subject to indictment therefor, and on conviction thereof, be punished by a fine not less than fifty, and not exceeding one thousand dollars; and in addition thereto, be required to give security for his good behavior, for the space of twelve months.

Attempt to procure abortion.

Section 2. Every person who shall wilfully administer to any pregnant woman any medicines, drugs, substance or thing whatever, or shall use and employ any instrument or means whatever with intent thereby to procure the miscarriage of such woman, unless the same shall be necessary to preserve her life, or shall have been advised by a respecable physician to be necessary for that purpose, shall upon conviction, be punished by fine not exceeding five hundred dollars, and by imprisonment in the county jail, not less than three, and not exceeding six months.

Adultery and fornication.

Section 3. If any man and woman shall live together in adultery or fornication, each of them shall be deemed guilty of a misdemeanor, and shall, upon the first conviction, be fined in a sum not less than one hundred dollars, and may, at the discretion of the court before whom such offenders are tried, be imprisoned for a term not exceeding six months; on a second conviction for adultery or fornication, the offenders shall be fined in a sum, not less than three hundred dollars; and at the discretion of the court trying the case, may be imprisoned in the county jail, not exceeding twelve months; and upon a third, or any subsequent conviction, the offender shall be punished by imprisonment in the penitentiary two years.

Polygamy. Section 4. If any person, who has a former wife or husband living, shall marry another; or if he or she continue to cohabit with such second husband or wife in this State, he or she shall, except in the cases mentioned in the following section, be deemed guilty of polygamy, and shall be punished by imprisonment in the penitentiary, not less than two, and not exceeding five years.

Explanatory. Section 5. The provisions of the preceding section, shall not extend to any person whose husband or wife shall have continually remained absent for the space of five years together, the party marrying again not knowing the other to be living within that time; nor to any person, by reason of any former marriage, that shall have been dissolved by the decree of a competent court, when he or she was not the guilty cause of such divorce.

Incestuous marriages. Section 6. Persons within the degrees of consanguinity or relationship within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall live in a state of adultery with each other, knowing of such consanguinity, shall, upon conviction, be punished by imprisonment in the penitentiary not less than two, and not exceeding seven years.

Sodomy. Section 7. Every person who shall commit the abominable and detestable crime against nature, either with mankind or with any beast, shall be punished by imprisonment in the penitentiary not less than two, nor exceeding ten years.

Gaming. Section 8. If any person shall play at any tavern, inn, store house for retailing spirituous liquors, or house or place where spirituous liquors are retailed, or given away, or any public house or highway, or any other public place, or in any out house where people resort, at any game or games, with cards or dice, or with any other device or substitute for cards or dice, such person so offending, shall on conviction thereof, be fined in a sum not less than twenty and not exceeding fifty dollars.

Tavern keepers permitting gaming. Section 9. Every tavern keeper, or proprietor, or superintendant of any other public house, or owner or proprietor of any out house where people resort, or retailer of spirituous liquors, who shall knowingly suffer any game inhibited by the preceeding section, to be exhibited or played in his tavern, inn, or house for retailing spirituous liquors, or in any house or shelter apartment thereto, or any other public place or out house where people resort, shall upon conviction, be fined not less than fifty and not exceeding three hundred dollars.

Att'y General and solicitors to summon persons before grand jury. Section 10. The attorney general and the several solicitors of this State shall have the power, and it shall be their duty, to send a summons to any person or persons, in the name of such solicitor or attorney general, directing them to come before the grand jury of the proper county, and to give evidence of any gaming in violation of the laws of this State against that offence; and the person or persons so summoned shall not be liable or subject to an indictment, for any offence of which he may have given evidence;

and the attorney general, and the several solicitors, are authorized to issue a summons as aforesaid, not only while the grand jury is in session, before which the witness may be required to testify, but at any time previous to the sitting of the court at which they are to be impannelled: and if any person shall fail or refuse to attend and testify in obedience to such summons, he shall be liable to indictment, and on conviction shall be fined in any sum not less than twenty nor exceeding five hundred dollars, and sentenced to a term of imprisonment not exceeding three months: *Provided*, all reasonable excuses shall be heard.

Penalty for refusal to obey.

Section 11. On the prosecution of any person for gaming, against the provisions aforesaid, it shall be sufficient for the indictment to charge, that the person or persons so offending, did play at cards or dice, or some device or substitute for cards or dice, (as the case may be,) in some of the places above specified, without stating what description of game, or without stating that money or any other thing, was bet or staked upon such gaming; and upon making proof of the charge, as laid in the indictment, the offence shall be complete without proving what the game was or is called, and without proving that any thing was bet upon the event of such game.

Indictment for gaming.

Section 12. If any person shall hereafter be guilty of keeping or exhibiting any gaming table, called A B C or E O, or roulette, or rowley powley, or rouge et noir, or thimbles, sometimes called three ticket lottery, or chucker luck, or faro bank; or shall keep and exhibit any other gaming table, or bank of the like kind, or of any other description, under any other name or denomination, or without any name therefor, or shall in any manner be interested or concerned in the keeping, exhibiting or carrying on, any such table, bank or game, each and every person so offending, and being thereof convicted, shall be punished by imprisonment in the penitentiary for two years.

Gaming tables.

Section 13. It shall be the duty of the judges of the circuit and county courts, justices of the peace, sheriffs and constables, mayor, aldermen and other police officers of cities, and the municipal or police officers of towns, who shall receive information, or shall have good cause to believe that any person is guilty of any of the offences created by the preceding section, to cause such person so suspected to be arrested, and brought before such judge, justice or some other officer or magistrate having jurisdiction in the premises, and if on examination, the said judge, justice or magistrate before whom such suspected person shall be taken, shall be of opinion that he is guilty of the charge alledged against him, said judge, justice or magistrate shall bind him in a recognizance with good and sufficient sureties, to appear at the next term of the circuit court of the proper county, to answer such charge; and further, that he will not in the mean time be guilty of the like offence, and in default of giving the surety required, he shall be committed to the jail of the county for safe keeping.

Duty of judges, justices, &c.

Betting at gaming tables

Section 14. If any person shall bet or be concerned in betting at any of the gaming tables or banks before mentioned or particularly described, or referred to in general terms, such person shall upon conviction, be fined in a sum not exceeding one hundred dollars.

Indictment: For keeping gaming table.

For betting.

Section 15. In all prosecutions for offences under the preceding sections, it shall be sufficient for the indictment to charge that the person indicted did keep the gaming table or bank, particularly or generally described as aforesaid, for gaming, without proving that any money or other thing was won or lost, or bet upon such gaming table or bank; and to alledge that the person charged was interested or concerned, in keeping, exhibiting, and carrying on such table, game or bank, without setting forth the particular manner in which the defendant was concerned; and it shall be sufficient in an indictment for betting, and being concerned in betting, at, or keeping, or being concerned in keeping, or carrying on any gaming table or bank, either particularly described or referred to in general terms as aforesaid, to describe the table or bank by its name, (if known) if not known, then by a table or bank the name of which is unknown; and the several solicitors in this State, the attorney general and grand jury, shall have power under the direction of the court, to compel the attendance of witnesses, in the same manner as is prescribed in a preceding section of this chapter.

Persons permitting gaming in houses, &c.

Section 16. If any owner or occupant of any house, out house, or other building, booth or tent, shall knowingly permit or suffer any of the tables or banks particularly or generally described as aforesaid, to be carried on or exhibited in his house, out house, or building, booth or tent, and be thereof convicted, he shall be fined in a sum not exceeding two thousand dollars: *Provided, always,* that if the owner or occupant of any house, out house, or other building, booth or tent, shall give information to any judge or justice of the peace, of the proper county, against any person keeping, exhibiting or concerned or interested, in said table or bank, within six days after the same comes to his knowledge, he or they so informing shall not be liable to the penalties of this section.

Money lost gaming may be recovered.

Proviso.

Section 17. If any person shall by playing at cards, dice, or any other game, or by betting on the sides or hands of such as are gaming, lose to any person so playing or betting, any sum of money, or other goods whatever, and shall pay or deliver any part thereof, to the winner, the person so losing, or paying, or delivering the same, may sue for and recover such money in an action for money had and received for the use of the plaintiff, and such goods in an action of trover or detinue, according as the possession may or may not be with the winner, at the time of the action brought: *Provided, however,* that neither of the aforesaid actions shall be maintained, by the loser of such money or goods, unless the same shall be brought within six months from the time of the payment or delivery of the goods.

Proceedings regulated.

Section 18. If any action shall be brought as provided in the preceding section, by the person so losing any money, or goods, against the person winning the same, when it shall appear from the declaration, that such money, or goods, came to the hands of the defendant by gaming, if the plaintiff, when required by the court before whom the cause is tried, to establish his cause of action, shall make oath that the said money, or goods, were lost by gaming, with the defendant, as alleged in the declaration, the plaintiff shall recover the amount of such money, or goods, unless the defendant will make oath that he did not obtain the same by gaming; and if he shall so discharge himself, he shall recover of the plaintiff his costs: *Provided*, that the plaintiff may, upon being required by the court to establish the allegations of his declaration, refuse to testify at his election, and if he so refuse, he may maintain and prosecute his action according to the usual course of proceeding in such actions at common law.

Proviso.

Billiard table.

Section 19. Every person who shall keep a billiard table in connection with a house where spirituous liquors are retailed, as an appendage thereto, shall, on conviction, be fined in a sum not less than two hundred, and not exceeding five hundred dollars.

Lotteries.

Section 20. If any person shall, without special permission from the legislature, set up any lottery to raise and collect money, or for the sale or distribution of any property, he shall, on conviction, be fined not less than one hundred, and not exceeding two thousand dollars.

Fraud in packing cotton.

Section 21. Every person who shall knowingly commit any fraud in the packing or bailing of cotton, by placing good cotton on the outside of such bale, commonly called plating, when the interior part thereof is composed of inferior cotton, or by putting and mixing with the cotton contained in the bale, any other material or substance than ginned cotton, and be thereof convicted, shall be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned not exceeding three months.

Fraud in sugar.

Section 22. Every person who shall be guilty of a fraud by mixing sand, or other matter or thing with sugar, so as to deteriorate the quality thereof, with intent to injure or defraud the purchaser of the same, and be thereof convicted, shall be fined not less than twenty, nor more than two hundred dollars, and may be imprisoned not more than thirty days.

Betting on elections.

Section 23. Every person who shall hereafter make any bet, or wager of money, or other thing of value upon any election in this State, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not less than fifty, and not exceeding five hundred dollars; and if the person who shall thus make a bet or wager, of money, or other thing of value, be a sheriff, coroner, constable, or other person who may be concerned in holding, conducting, or making any election, as an officer, judge, clerk or otherwise, he shall, in addition to the fine above prescribed, be imprisoned at the discretion of the jury trying the offence, in the county jail, for a period not exceeding six months.

Officers betting.

CHAPTER SEVENTH.

Of Miscellaneous Offences.

Unchartered banking companies.

Section 1. It shall be unlawful for any person or persons, or any company, corporation, or unchartered banking association, to make, emit, issue, or put in circulation, any note, bill, bond, draft, check, or post note, or paper of any name or description whatsoever, to answer the purpose of money, or for general circulation, and for every such note, bill, bond, draft, check, post note, or other paper so made, emitted, issued, or put in circulation, such person or persons, and each and every individual of said company, corporation, or unchartered banking association, so making, issuing, emitting, or putting in circulation, such note, bill, bond, draft, check, post note, or other paper, shall be held to be guilty of a misdemeanor, and shall be liable to be indicted therefor, and, upon conviction, shall be fined for every such offence at the discretion of the jury trying the same, not less than one hundred, nor more than five hundred dollars, and that upon failure to pay the fine, shall be imprisoned in the county jail for a term not exceeding twelve months.

Signing notes or bills.

Section 2. If any person or persons shall sign any note, bill, bond, draft, check, post note, or any paper of other name or description whatsoever, as cashier or president, or under any other name, or in the name of any company, incorporation, or unchartered banking association, to be put in circulation to answer the purposes of money, such president, or cashier, or other person, under any other name, so signing said note, bill, bond, draft, check, post note, or paper as aforesaid, shall be deemed guilty of a misdemeanor, and shall be liable to be indicted, and, upon conviction, shall be fined for every such offence, in a sum not less than one hundred, nor more than five hundred dollars, at the discretion of the jury trying the same, and the signatures of the person or persons so charged, to the note, bond, bill, draft, check, post note, or paper aforesaid, shall be taken and held to be proof of such signing, unless the fact of signing be denied on oath by the defendant.

Passing off or circulating notes or bills.

Section 3. It shall be unlawful for any person or persons, within the limits of this State, to pass off, issue, emit, or put in circulation, any note, bill, bond, check, draft, or post note, of any incorporation, company, or unchartered banking association; and any person or persons violating the provisions of this section, shall be deemed guilty of a misdemeanor, and shall be liable to be indicted, and upon conviction, shall be fined for every such note, bill, bond, check, draft, post note, or other paper so issued, emitted, passed off, or put in circulation, not less than twenty, nor more than one hundred dollars, at the discretion of the jury trying said offence.

Section 4. Every one who shall hereafter carry concealed about his person, a bowie knife, or knife or instrument of the like kind or description, by whatever name called, dirk or any other deadly weapon, pistol or any species of fire arms, or air gun, unless such person shall be threatened with, or have good cause to apprehend an attack, or be travelling, or setting out on a journey, shall on conviction, be fined not less than fifty nor more than three hundred dollars: It shall devolve on the person setting up the excuse here allowed for carrying concealed weapons, to make it out by proof, to the satisfaction of the jury; but no excuse shall be sufficient to authorize the carrying of an air gun, bowie knife, or knife of the like kind or description.

Carrying concealed weapons.

Section 5. If any person shall at the same election vote more than once for the same candidate for the same office, or for different candidates for the same office, either in the same or in different precincts, or vote when he is not legally authorized so to do, he shall upon conviction, be adjudged guilty of a misdemeanor, and fined in the sum of two hundred dollars, and be imprisoned in the county jail not exceeding one year.

Illegal voting.

Section 6. Every apothecary, druggist, or other person, who shall sell and deliver any arsenic, corrosive sublimate, prussic acid, or other substance, either solid or liquid, usually denominated poisonous, without having the word 'poison,' written or printed on a label attached to the vial, box or parcel, in which the same is sold, or shall sell and deliver any tartar emetic, without having the true or common name thereof written or printed upon a label attached to the vial, box or parcel containing the same, shall upon conviction, be adjudged guilty of a misdemeanor, and punished by a fine not exceeding one hundred dollars.

Apothecaries selling poisonous drugs without label.

Section 7. Every apothecary, druggist, or other person, who shall give, sell or deliver, any of the drugs described in the preceding section, or any other drug or medicine, poisonous in its nature, to any slave, without an order in writing from the owner or manager of such slave, designating the drug or medicine, either by name, or the effect to be produced by it, he or she so offending, shall on conviction, be held guilty of a misdemeanor, and punished by a fine not exceeding two hundred dollars, and may also be imprisoned not exceeding three months.

Selling to slaves.

Section 8. Every person who shall buy, sell or receive from any slave, any commodity of any kind or description, without the leave or consent of the master, owner, or overseer of such slave, verbally or in writing, expressing the articles permitted to be sold or bartered, first obtained, shall on conviction, be fined in a sum not less than ten, nor more than one hundred dollars, and may be imprisoned not more than three months.

Trading with slaves.

Section 9. Every sheriff, coroner, constable, clerk, or justice of the peace, who shall within three days after demand made, fail or refuse to pay over any money received or collected by him in his official capacity, shall be deemed guilty of a misdemeanor, and on conviction, shall be fined in a sum not less than one half, and not exceeding the entire amount received or collected: *Provided*, that the party entitled to such money, shall remain in the county, or

Officers failing to pay money collected.

Proviso.

have an agent there, up to the expiration of three days after demand as aforesaid; and nothing in this section contained shall be construed to affect the private remedy of the party injured, either by motion or otherwise.

CHAPTER EIGHTH.

Of General Provisions.

Duty of court in capital cases.

Section 1. Whenever any person shall be sentenced to the punishment of death, the court before whom he was tried, shall direct that he be hanged by the neck till he is dead; and such sentence shall be executed by the proper executive officer of the law, on such day as the court shall appoint, not less than four weeks and not more than eight weeks from the time of the sentence, unless the court trying such convict, shall suspend the execution by a reference to the supreme court, of novel and difficult questions of law, arising in the case.

Sentence.

Section 2. The sentences of courts directing the execution of a person as aforesaid, shall be executed by the sheriff or by his regularly appointed deputy, unless there be no sheriff in the county, in which event, the coroner shall be authorized to do execution.

Execution.

Regulations.

Section 3. The punishment of death shall be inflicted either in the prison where the convict shall be confined, or within an inclosed yard of such prison, if there be one, or if the arrangement of the prison and its precincts be such as execution cannot there be done, then the punishment shall be inflicted as heretofore; and it shall be the duty of the sheriff, or if there be no sheriff, the coroner, to give at least three day's previous notice, to the judge of the county court, the clerks of the circuit and county court, at least five justices of the peace, if there be so many in the county, and the physicians of the neighborhood, who may be present and witness the execution; and the persons thus attending the execution, shall make out and sign a certificate in writing, declaring that the convict was executed pursuant to his sentence; and the officer doing execution, shall permit the counsel of the convict, such ministers of the gospel as the convict shall desire, and his relations to be present, and also, such officers of the prison, deputies and constables, military guard, or other assistants, as he shall see fit.

Female convicts—when pregnant.

Section 4. If a female convict sentenced to the punishment of death, shall be pergnant, it shall be the duty of the sheriff of the county, with the concurrence of the judge of the circuit court, or if he be absent, with the concurrence of any other circuit judge of the State, to summon a jury who are free from all interest, occasioned either by relationship or otherwise, which jury shall consist of the number of six, all of whom shall be physicians, if it be practicable; and if it be not practicable to obtain so many physicians in the county, then the jury shall be made up by associating a number of intelligent persons to complete that number, and the sheriff shall give immediate notice thereof to the solicitor of the circuit, who shall attend and have power to issue subpœnas, and an inquisition shall be made and signed by the jurors and sheriff.

Duty of sheriff.

Section 5. If by such inquisition it shall appear that such female convict is with child, the sheriff shall suspend her sentence, and shall transmit the same to the Governor.

Of Governor.

Section 6. Whenever the Governor shall be satisfied that such female convict is no longer with child, he shall issue his warrant appointing a day for her execution pursuant to her sentence.

When sentence is not executed, how proceeded against.

Section 7. When for any reason any convict sentenced to the punishment of death, shall not have been executed pursuant to such sentence, and the same shall stand in full force, the circuit court of the county before whom such convict was tried, on the application of the solicitor of the circuit shall direct the convict to be brought to the bar of the court, or if necessary, shall issue a writ of *habes corpus* for that purpose, or if he be at large, a warrant for his apprehension shall be issued by said court, or by any other judge or justice having authority to cause offenders against the criminal laws to be arrested, and upon such convict being brought before the court, it shall proceed to inquire into the facts and circumstances, and if no legal reason exist against the execution of such sentence, the court shall re-sentence the convict to execution, on a day therein to be appointed; and if such offender shall be arrested under a warrant to be issued as aforesaid, the judge or justice issuing the same, if no good reason is shown for his discharge, shall commit such convict, that he be forthcoming to abide the order and sentence of the said circuit court.

Felony defined.

Section 8. The term felony when used in any statute, shall be construed to mean an offence, for which the offender on conviction shall be liable by law to be punished by death, or for which imprisonment in the penitentiary, is made the appropriate punishment.

The term person how applied.

Section 9. When the term *person* in this code is used to designate the party whose property may be the subject of any offence, such term shall be construed to include the United States, this State, or any other state government or country, which may lawfully own any property within this State, and all public and private corporations, as well as individuals; and wherever the term *person* is used as designating the offender against criminal justice, the name shall be held to include all persons concerned, when there are more than one, and wherever the term *he*, *him* or *them* is used in reference to the commission of any offence, it shall be held to extend to females, unless its meaning be expressly limited, or in the connexion in which they are used, such extended meaning cannot with propriety be given to them.

In cases of fraud, &c.

Section 10. Where any intent to injure, defraud or cheat is required by law to be shown in order to constitute any offence, it shall be sufficient if such intent be to injure, defraud or cheat the

United States, this State, or any other State, or any public officer thereof, or any county city or town, or any corporation, body politic, or private individual.

Of variance between evidence and indictment.

Section 11. Whenever in the progress of a criminal trial it shall be found that there is such a material variance between the allegations of the indictment and the proof adduced as will for that cause authorize the acquittal of the accused, and he shall not assent to the amendment of the indictment so as to correspond with the proof, it shall be lawful for the solicitor with the leave of the court to enter a *nolle prosequi*, at any time before the jury shall retire, and prefer another indictment at the same or any subsequent term of the court, and the period of time elapsing between the prefering of the first indictment, and the second or other subsequent indictment, shall be deducted from any term limited for the prosecution of the offence for which the accused is indicted.

Offences of different degrees.

Section 12. Upon an indictment for any offence consisting of different degrees, as prescribed by law, the jury may find the accused not guilty of the offence in the degree charged in the indictment, and may find him guilty of any degree of such offence inferior to that charged in the indictment, or of an attempt to commit such an offence; and whenever a person is indicted for an offence embracing one or more offences of a lesser character, if the guilt of the accused is not made out as charged, it shall be competent for the jury if the proof authorizes it, to find the accused guilty of the lesser offence, whether a felony or a misdemeanor.

Principals in 2d degree.

Section 13. Every person who shall be a principal in the second degree in the commission of any felony, or who shall be accessroy to a murder before the fact, shall upon conviction, be punished in the same manner as is hereinbefore prescribed in respect to principals in the first degree.

Concealing or aiding felons to escape.

Section 14. Every person who shall be convicted of having concealed any offender after the commission of any felony, or of having given such offender any other aid, knowing that he has committed a felony, with intent and in order that he may avoid or escape from arrest, trial and conviction or punishment, and no other shall be deemed an accessory after the fact, and upon conviction shall be punished by fine not exceeding one thousand dollars, and may be imprisoned at the discretion of the court in the county jail, not exceeding six months: *Provided*, the person standing to the principal offender in the relation of parent, child, brother, sister, husband or wife, shall not be deemed accessories after the fact.

Proviso.

Accessories to felony.

Section 15. Any person charged as an accessory to any felony, before the fact, shall be indicted, tried and punished in the same county, where the principal felon was or might be indicted and tried, although the offence of counselling or procuring a commission of such felony, may have been committed on the high seas, or on land, either within or without the limits of this State.

Section 16. Every person who shall be an accessory to any felony either by common law or by any statute, now or hereafter to be enacted, may be indicted, tried and convicted, if the principal felon be dead, or shall have fled from justice, and an allegation of either of these facts, shall be equivalent to an allegation of a previous conviction.

Accessories tried if principal be dead, &c.

Section 17. If any person convicted of an offence punishable by imprisonment in the penitentiary, and either upon being pardoned or upon the expiration of the term of his sentence, shall subsequently be convicted of any offence committed after such pardon or discharge, he shall upon each second or any subsequent conviction, be sentenced to imprisonment at least for the same period of time that he was sentenced upon his last conviction, and in addition thereto one fourth of the length of time of such sentence; *provided*, that the offence for which such second or subsequent conviction shall be had, shall have been committed after the first or previous conviction; and in no case shall the term of imprisonment exceed the longest period prescribed by law for the particular offence.

Pardoned convicts punished.

Section 18. Every person who shall have been convicted in any of the United States, or in any District or Territory thereof, or in any foreign country of an offence, which if committed in this State would be punishable by imprisonment in the penitentiary, shall, upon conviction for any subsequent offence committed within this State, be subject to the punishment prescribed in the last section upon second and other subsequent convictions, in the same manner and to the same extent, as if such first conviction had taken place in a court in this State.

Convicts from other States.

Section 19. When any person shall be convicted of two or more offences before sentence shall have been pronounced upon him for either offence, the imprisonment to which he shall be sentenced upon the second or other subsequent conviction, shall commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second term of imprisonment as the case may be.

Sentences, how to take effect.

Section 20. Whenever, by law, an offender is declared punishable, upon conviction, by imprisonment in the penitentiary for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction, may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than such as are prescribed; and in all cases the court shall prescribe the term of imprisonment both in the penitentiary and county jail, unless it shall be expressly directed otherwise.

When sentence is not limited, &c.

Section 21. Whenever the appropriate punishment for any offence shall be a fine only, or a fine and imprisonment, it shall be the duty of the jury to assess the fine, except in such cases as it may be otherwise specially provided.

Jury to assess fine.

When fines are not paid convict to be imprisoned.

Section 22. In all cases punishable by fine only, or fine and imprisonment in the county jail, when the fine assessed, together with all costs, are not paid, it shall be the duty of the court to sentence the convict to the county jail for a term not less than ten days; and when the fine is as much as fifty and not exceeding one hundred dollars, the commitment shall be for the period of thirty days; when as much as an hundred and not exceeding two hundred dollars, the commitment shall be for sixty days; when over two hundred and less than five hundred dollars, the commitment shall be for three months; when five hundred dollars and more, it shall be six months; and in all cases the judgment of the court shall not only direct the imprisonment of the convict for a term certain, but shall also direct his confinement till the fine and costs are paid, or he shall be otherwise legally discharged: *Provided*, that in cases where a fine is the only punishment, or where the infliction of imprisonment is discretionary with the court, and the court may think that the payment of the fine assessed is an adequate punishment, if in such cases the convict shall, with one or more persons of undoubted responsibility, as his sureties, confess a judgment in favor of the State, for the amount of the fine and costs, the court shall not sentence him to imprisonment as directed by this section; but the payment of the fine, or the security therefor, given aforesaid, imprisonment for its non-payment shall not prevent the court, where it is vested with power from superadding a further term of imprisonment.

Proviso.

Misdemeanors.

Section 23. All misdemeanors the punishment of which is not provided for by this code, shall be punished as at common law, by fine and imprisonment in the county jail; the fine shall be assessed by the jury, and shall in no case where the party injured has a private remedy for the recovery of damages, exceed two thousand dollars, unless the fine is to be paid to him to compensate for the injury sustained; the imprisonment may or may not be superadded, as the court trying the offender shall deem expedient, but its duration shall in no case exceed six months; and for convictions for misdemeanors expressly embraced by this code, where a fine only is made the appropriate punishment, imprisonment shall be imposed only in the event of its nonpayment, as provided in the preceding section.

Prisoners may be removed when sick.

Section 24. Whenever it shall be made satisfactorily to appear to any judge of the circuit court, or to the judge of the county court of the county, that the life of a prisoner confined in a county jail is endangered, or that his health will be seriously affected by remaining therein, such judge shall by an order in writing, direct the sheriff or jailer to remove such prisoner to some suitable and safe place, as near as may be to the jail, and him there safely keep until his health be sufficiently restored to authorize his recommitment; to insure the safe keeping of such prisoner, the sheriff or jailer shall summon a sufficient guard to aid him day and night; and the guard so summoned shall be bound to attend under the penalty provided for disobedience in refusing to assist in conveying convicts to the penitentiary, and shall be entitled, for each days service, to one dollar and twenty-five cents; and if the sheriff or jailer, shall, negligently or voluntarily, suffer any prisoner to escape, during the time he shall be thus removed from the jail, he shall be guilty of an escape, in the same manner as if such prisoner shall have escaped from jail; and if such sheriff or jailor, shall not recommit to the jail such prisoner, as soon as his health shall appear to have been sufficiently restored to render it prudent, he shall be guilty of a misdemeanor, and on conviction, shall be fined not less than fifty, and not exceeding five hundred dollars.

Judgment absolute.

Section 25. Where an original and *alias* writ of *scire facias*, issued upon a judgment *nisi*, rendered at the instance of the State, upon a forfeited recognizance, shall be returned "not found," such return shall be equivalent to the personal service of the process, and authorize the court in which the judgment, *nisi*, was rendered to make the same absolute: *Provided*, that such writs shall have been returned by the proper officer of the county in which the forfeited recognizance, shall have been entered into or acknowledged.

What sufficient in indictments.

Section 26. All indictments for offences inhibited in this code, which are offences at common law, shall be good, if the offence be charged or described according to the common law; and the party charged, on conviction, shall receive the punishment prescribed by this act, nor shall the words "force and arms," or "contrary to the form of the statute," be regarded as necessary in any indictment whatever; but indictments wanting these words, shall be deemed as effectual, to all intents and purposes, as indictments having the same words in them.

Office vacated when the holder is convicted.

Section 27. Whenever any convict, sentenced by any court of this State or of the United States, to be punished by imprisonment in the penitentiary, shall at the time of conviction and sentence, hold any office under the constitution and laws of this State, such office shall be deemed to be vacated from the time of his sentence to imprisonment in the penitentiary; and if the judgment against such convict shall be reversed, he shall be restored to his office, with all its rights and emoluments; but, if pardoned, he shall not by reason thereof be restored to his office.

Effect of sentence on civil rights.

Section 28. The effect of a sentence of imprisonment in the penitentiary shall be to put an end to the right of such convict to execute the office of an executor, administrator or guardian, in the same manner as if such convict had been removed from such office, to extinguish all private trusts not susceptible of delegation by such convict; when the sentence of imprisonment shall be life, the convict shall be deemed civilly dead; but such convict may make and publish his last will and testament, at any time, within thirty days after his sentence; and if any married person be sentenced for a term of seven or more years, and shall have, pursuant to such sentence, remained in confinement for the space of two years, it shall be lawful cause of divorce.

Section 29. Every person sentenced to imprisonment in the penitentiary for the offence of bribery, forgery, robbery, burglary, Disqualifying convicts from giving testimony.

arson, larceny, perjury, subornation of perjury, or conspiracy to cheat, shall be incompetent forever after to give testimony in any court of justice, or any tribunal relating to any matter or thing whatever, and shall also be disqualified from serving on juries; and no pardon granted by the Governor in any one of the cases stated in this section, shall have the effect to remove the disability imposed, unless such pardon shall so express upon its face.

Solicitors fees regulated.

Section 30. Upon all convictions on indictments under the sections of this chapter, which inhibit the keeping or exhibiting of any gaming table or bank, or which makes it penal for the owner or occupant of any house to permit or suffer the same to be used for the keeping or exhibition of any gaming table or bank, the attorney general or solicitor, shall be entitled to a fee of one hundred dollars; upon convictions on indictments under any other provision of the law against gaming, the attorney general or solicitor, shall be entitled to a fee of forty dollars; and upon all convictions in which the punishment shall be imprisonment in the penitentiary, the attorney general or solicitor, shall be entitled to a fee of twenty dollars, and on all other convictions, to a fee of five dollars, to be taxed in the bill of costs, and paid by the party convicted.

Clerk to issue fi. fa.

Section 31. After every conviction and sentence for any offence made punishable by imprisonment in the penitentiary, the clerk shall issue a *fieri facias*, on the judgment which shall be rendered in favor of the State, in usual form, for the collection of the costs of the prosecution, and for the collection of the value of the property assessed by the jury, in larceny and other cases authorized by law.

Powers vested in sheriffs, &c.

Section 32. That sheriffs, coroners and constables may be vested with ample power to enable them to discharge the duties devolved upon them, they are hereby authorized in cases not otherwise provided for by this code, to summon to their aid a sufficient number of the *posse* of their county, to enable them to execute all process, both civil or criminal, or to arrest all offenders against the law in cases in which they are authorized to proceed without process, or to convey all persons in custody from place to place pursuant to law; and every person summoned by either of such officers for the purposes aforesaid, who shall refuse obedience to the summons, shall on conviction, be fined in a sum not less than fifty and not exceeding three hundred dollars; and it shall be the duty of the officer to present to the grand jury at the next term of the circuit court of the county, the case of such offender, that the same may be examined according to law.

Persons summoned not liable for defect.

Section 33. Any person summoned by a sheriff, coroner or constable, as in the last section provided, shall not be liable to an action for obeying such summons, by reason of any defect or irregularity in the authority of such officer, as he did nothing more than was allowed had his authority been regular and sufficient.

Section 34. The persons summoned as aforesaid, if employed as long a time as one day, shall be allowed the same compensation as is allowed to guards who aid in conveying convicts to the penitentiary, and shall be paid from the same fund, unless their services were required in the execution of civil process, in which the charge for compensation shall be borne by the party chargeable with the costs of the cases: *Provided*, that it shall be competent for such party to move the circuit court of the county, next thereafter to be holden, to exempt him from the payment of the charge; notice of which motion shall be given to the officer and the plaintiff in the process; and if after hearing proof adduced, the court shall be satisfied that the officer had no just cause for summoning assistants, and was not so directed by the plaintiff, he shall be taxed with the charge for compensation; but if he acted under directions from the plaintiff or his attorney, then the plaintiff shall bear the burden, and also the costs of the motion; but if the party making the motion fail to sustain the same, it shall be dismissed at his costs.

Compensation of persons summoned.

Proviso.

Section 35. In all prosecutions for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offence, and by what court or before whom the false oath or affirmation was taken, averring such court or person to have competent authority to administer the same, without setting forth the commission or authority of such court or person; nor shall it be necessary to set out at length any bill, answer, indictment, information, declaration, record or proceeding, other than as aforesaid.

Prosecutions for forgery.

Section 36. It shall be lawful for the defendant in any prosecution for a libel, to give in evidence in his defence, the truth of the matter contained in the publication charged as a libel, and the jury shall be judge both of the law and the fact, under the direction of the court, as in other cases.

Libels.

Section 37. All offences punished by confinement in the penitentiary, except murder in the second degree, manslaughter in the first degree, arson, forgery, counterfeiting, grand larceny, or the larceny of a slave, horse, ass or mule, perjury, and subornation of perjury, shall be prosecuted within three years next after the commission of such offence, and not after.

Actions limited to three years.

Sectiod 38. In perjury and subornation of perjury the offender shall be prosecuted within five years, and not after; the prosecution for all misdemeanors shall be commenced within one year after the commission of the offence and not after.

Perjury limited to 5 years.

Section 39. The issuance of a warrant shall be deemed the commencement of a prosecution, within the provisions of the preceding section.

Prosecution.

Section 40. No person charged with the commission of an offence capitally punished, shall be admitted to bail as a matter of right, when he is not tried at the first term of the court, at which he was properly triable, if the failure to try his case proceeded from the non-attendance of the State's witnesses; where an affidavit is made satisfactorily accounting for their absence, or where there is an entire failure to hold the court, or where the trial is delayed in consequence of the sickness of the judge, or some member

Bail in capital cases.

of his family, or where there is a premature adjournment of the court, for either of the last mentioned, or other sufficient cause, or where the judge, from any cause, is legally incompetent to try the accused; or where the term allowed by law, is so short that the case of the accused according to the accustomed course of proceeding could not be tried, or where it was found impracticable to obtain a jury for his trial, or where the trial was not completed in consequence of the sickness of a juror, or there was a mis-trial for any cause, or where the delay proceeds from the fault or misfortune of the prisoner; but if the accused shall not be tried at the next stated term of the court, and the failure to try his case shall not be occasioned by his fault or misfortune, or on his application, or with his assent, he shall be discharged on giving good and sufficient bail: *Provided*, that this section shall not be so construed as to prevent a prisoner, committed for a capital offence, from being bailed at or before the first stated term of the court, if authorized by law.

Proviso.

Section 41. The Governor of the State shall be, and is hereby authorized (if in his opinion it may consist with the public welfare) by and with the consent of the person condemned, to commute the punishment of death, by substituting therefor, imprisonment in the penitentiary for life or for twenty years, for all sentences of death which may have been, or may be rendered for offences committed previous to the enactment of this code; and he may commute in like manner any ignominious punishment by substituting therefor imprisonment in the penitentiary for a term of years, not less than two; and such commutation of punishment shall be as effectual as if sentence of imprisonment in the penitentiary had been passed by a competent court; it shall in such case be the duty of the Governor to cause a statement of such commutation to be certified to the clerk of the court where the conviction was had, whose duty it shall be to enter the same of record at the next term of the court, under the direction of the presiding judge, and the convict whose sentence is thus commuted shall be conveyed to the penitentiary as if he had been originally sentenced therein.

Governor empowered to commute punishment.

Section 42. The preceding provisions of this code shall not extend to slaves, and if any slave shall commit any of the offences hereinbefore enumerated, he shall be tried and punished according to the law applicable to his case; but the preceding provisions shall embrace all offences committed by free negroes or other persons of color, except so far as they are excepted therefrom, either expressly or by enactment of a different law applying to them.

Provisions how applied.

CHAPTER NINTH.

Of Preliminary Proceedings in Criminal Cases.

Arrests.

Section 1. It shall be the duty of the sheriff, coroner, and all constables within their respective counties, to arrest all persons who may commit in their presence any breach of the peace, or any one who may threaten to commit a breach of the peace, either by words or by acts, and the person arrested shall be taken before some convenient magistrate, together with all the testimony that can be produced against him, and such magistrate shall proceed to inquire into the circumstances, and shall dispose of the party arrested as law and justice may require.

Persons suspected.

Section 2. Where a sheriff or coroner shall have strong ground to suspect that any person within his county has been guilty of a capital offence, within this State, it shall be his duty to arrest him, and take him forthwith before the judicial magistrate, within his county, who shall thereupon inquire into the evidence for and against the party suspected, and, upon such inquiry, shall so dispose of him, as law and justice may require.

Powers of judicial officers.

Section 3. All judicial officers in this State, and the mayor and aldermen of cities, and the municipal officers of all incorporated towns, within their respective jurisdiction, shall have power to cause to be kept, all laws made for the preservation of the public peace, and in the execution of that power, may require persons to give security to keep the peace, in the manner provided in this chapter.

Complaints before magistrates.

Section 4. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offence against the person or property of another, the magistrate shall examine the complaint, and any witnesses that may be produced, on oath, and cause such complaint to be reduced to writing, and subscribed by the party so examined; and if, upon such examination, it shall appear that there is a just cause to fear the commission of any such offence, by the person complained of, it shall be the duty of the magistrate to issue a warrant, under his hand, with or without seal, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate, or court, having jurisdiction of the matter.

Party complained of.

Section 5. When the party complained of is brought before the magistrate, he shall be heard in his defence, and may be required to enter into a recognizance, with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this State, and especially towards the person requiring such security, for such term as the magistrate may direct, not exceeding twelve and not less than six months; but the party complained of shall not be required to appear at the next term of the circuit court of the county, unless he is also charged for some other offence, for which he ought to be held to answer in such court.

Recognizance. Section 6. If such recognizance shall be given, the party complained of shall be discharged, and if such person complained of shall refuse to find such security, it shall be the duty of the magistrate to commit him to prison, until he shall find the same, specifying in the warrant the cause of commitment, and the sum in which such security is required.

Discharge. Section 7. Any person committed for not finding sureties for the peace as above provided, may be discharged by the sheriff of the county in which he is detained, upon giving such security as was originally required of him.

Recognizance when returned. Section 8. Every recognizance taken in pursuance of the foregoing provisions, shall be transmitted by the magistrate or officer taking the same, to the next circuit court of the county.

Discharge—costs. Section 9. If upon examination it shall appear that there is no just cause to fear that any such offence will be committed by the party complained of, he shall forthwith be discharged; and if the magistrate shall deem the complaint unfounded or frivolous, he may order the complainant to pay the costs of the prosecution, who shall thereupon be answerable to the magistrate, and the officer executing the warrant for their fees, and an execution may issue to coerce payment.

Security. Section 10. In all cases where a person is required to give security for the peace, or for his good behavior, the court or magistrate may further order that the costs of the prosecution, or any part thereof, shall be paid by such person, for which purpose an execution may issue for the collection of the same.

Appeals. Section 11. Any person supposing himself aggrieved by the order of any judge of the county court, or any justice of the peace, mayor, or alderman of a city, or municipal officer of an incorporated town, requiring him to be recognized as aforesaid, may, on entering into bond and security, in a penalty equal to that required to enforce an observance of the peace, for the prosecution of his appeal to effect, and, in the mean time, to keep the peace, be entitled to an appeal to the circuit court of the county, next thereafter to be holden; and the magistrate from whose order an appeal is thus taken, may require such witnesses as he may think necessary, to be recognized, for their appearance at the court to which the the appeal is made.

Appellate court. Section 12. The court before which such appeal is prosecuted, may, upon examination, confirm the order of the justice, or discharge the appellant, or may require him to enter into a new recognizance, with sufficient sureties, conditioned in such sum, and for such time, as the court shall think proper; he may also make such order, in relation to the costs of the prosecution, as he may deem just and reasonable.

Failing to support appeal. Section 13. If any party appealing shall fail to support his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, and shall also stand as security for any costs, which shall be ordered by the court appealed to, to be paid by the appellant, and the examination on such appeal shall be *de novo.*

Section 14. Every person who shall in the presence of any magistrate, or before any court of record, make any affray, or threaten to kill, or beat another, or to commit any violence or outrage upon his person or property, in a manner tending to the disturbance of the peace, may be ordered without process to be recognized, with sureties to keep the peace, for a term not exceeding six months, and in case of refusal, to be committed as before directed.

Affrays before court.

Section 15. Whenever on a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited by the circuit court, the court may remit such portion of the penalty as the circumstances of the case shall render just and reasonable.

Court may remit penalty.

Section 16. For the apprehension of persons charged with criminal offences, the judges of the supreme court, chancellors, judges of the circuit and county courts, justices of the peace, mayor and aldermen of cities, and municipal officers of incorporated towns, within their respective jurisdictions, are authorized to issue process, under the rules and regulations hereinafter prescribed: upon complaint being made to any such magistrate, that a criminal offence has been committed, it shall be the duty of such magistrate to examine on oath the complainant, and any witnesses who may be produced by him, and shall cause the same to be subscribed by the parties examined, and if it shall appear that any such offence has been committed, the magistrate shall issue a warrant reciting the substance of the accusation, requiring the officer to whom it is directed, forthwith to take the person accused, and to bring him before the said magistrate, or some other magistrate of the county, to be dealt with according to law; and in the same warrant, may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on examination.

Judges of the supreme, circuit or county courts, and justices of the peace may issue process.

Section 17. Warrants issued by a judge of the supreme court, chancellor, judge of the circuit or county court or justice of the peace, may be executed in any part of this State, when the offender escapes from or out of the county, or from the sheriff or other officer, to whom such warrant was directed.

Warrants.

Section 18. When the sheriff, or other officer, pursues the offender out of his county, if he requires aid in order to arrest the fugitive, he shall procure some one of the magistrates, having jurisdiction in the county to which the fugitive has escaped, to indorse the warrant, and upon such indorsement being made, may summon persons to assist him, and exercise the same authority as in his own county.

Powers granted to sheriff, &c.

Section 19. No magistrate shall be liable to an indictment, action of trespass, or other action, for having indorsed any warrant, pursuant to the provisions of the last section, although it shall afterwards appear that such warrant was illegally or improperly

Magistrate making indorsement not liable, &c

Recognizance be taken without trial.

issued; in all cases where the offences mentioned in the warrant, are not punishable by death or in the penitentiary, if the person arrested shall request that he may be brought before a magistrate of the county in which the arrest was made, for the purpose of entering into a recognizance, without a trial or examination, the officer who made the arrest, shall convey him before a magistrate of such county, who may take from the person arrested a recognizance, with sufficient securities, for his appearance at the court having cognizance of the offence, next thereafter to be holden, and the party arrested shall be thereupon discharged; but when the recognizance is taken in a county, other than that in which the warrant issued, the magistrate taking it, in prescribing the penalty, shall act upon the presumption that the offence is of an aggravated character.

Magistrate taking bail.

Section 20. The magistrate who shall so admit the person so arrested to bail, shall certify the fact upon the warrant, and shall deliver the same, with the recognizance by him taken, to the person who made the arrest, who shall cause the same to be delivered, without unnecessary delay, to the clerk of the court to which the accused was recognized to appear.

If no bail, or bail refused.

Section 21. If the magistrate in the county, where the arrest was made, shall refuse to admit to bail, the person so arrested and brought before him, or if no sufficient bail shall be offered, the person having him in charge, shall take him before the magistrate who issued the warrant, or in his absence, before some other magistrate of the county in which the warrant was issued, to be proceeded with as hereafter directed.

Arrests.

Section 22. Every person arrested by warrant for any offence where no provision is made for his examination therein, shall be brought before the magistrate who issued the warrant, or if he be absent, or unable to attend, before some other magistrate of the same county, and the warrant, with a proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate.

Magistrate may adjourn examination.

Section 23. Any magistrate may adjourn the examination, or trial, pending before himself, from time to time as occasion shall require, not exceeding ten days at any one time, without the consent of the defendant, or person charged, and to the same or a different place in the county, as he shall think necessary, and in such case, if the party is charged with a capital offence, he shall be committed in the mean time; if the offence be of a less grade, he may be recognized in a sum, with sureties, to the satisfaction of the magistrate, for his appearance for such further examination, and for want of such recognizance, he shall be committed to prison; and on the day appointed for continuing the examination, he may be brought before the magistrate by his verbal order, to the same officer, who had charge of him, or by an order in writing to a different person, if the custody has been changed.

In case of default.

Section 24. If the person so recognized, shall not appear before the magistrate at the time appointed for his further examination, according to the condition of such recognizance, the magistrate shall record the default, and shall certify the recognizance, with the record of such default to the circuit court of his county, next to be holden, and the like proceeding shall be had thereon, as upon the breach of the condition of the recognizance before that court.

Examination.

Section 25. The magistrate, before whom any person is brought on a charge of having committed an offence, shall, as soon as may be, examine the complainant, and the witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matters connected with such charge, which shall be deemed pertinent.

Defendant allowed counsel.

Section 26. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination; and also, in the cross examination of the witnesses, in support of the prosecution; the magistrate while examining any witnesses, may, at his discretion, and shall upon the application of the prosecutor, or the accused, exclude from the place of examination, all the other witnesses, whether for or against the prisoner; he may also, if requested, or if he see cause, direct the witnesses, both for the prosecution and the defence, to be kept separate, so that they cannot converse with each other, until they shall have been examined.

Testimony of witnesses.

Section 27. The testimony of the witnesses examined, shall be reduced to writing, by the magistrate or under his direction, and shall be signed by the witnesses, if required by the magistrate; and if it shall appear to him upon the whole examination, that no offence has been committed, or if there is not probable cause to believe the accused guilty, and if the offence be bailable by the magistrate, and the prisoner offers sufficient bail, it shall be taken, and he shall be discharged; but if no sufficient bail be offered, or the offence be not bailable by the magistrate, the prisoner shall be committed to prison for trial.

Witnesses recognized.

Section 28. When the accused is admitted to bail, or committed, the magistrate shall also bind by recognizance, such witnesses against the prisoner, as he shall deem material, or as the prosecutor may desire, to appear and testify at the court to which the accused shall be held to answer.

Further recognizance.

Section 29. It shall be the duty of the magistrate, if requested by the accused, to bind by recognizance his witnesses, to appear in the same manner as he is required to recognize the witnesses for the State.

Security.

Section 30. Whenever a magistrate shall be satisfied, by due proof, that there is good cause to believe that any witness recognized on the part of the State, will not perform the condition of his recognizance, unless other security be given, such magistrate may order the witness to enter into a recognizance, with such sureties as may be necessary for his appearance at court.

Married women or infants.

Section 31. Whenever any married woman or infant, is a material witness, any other person may be allowed to recognize for their appearance, and the magistrate may, in his discretion, require such married woman or infant to procure recognizors, for their appearance at court.

Witnesses refusing to recognize.

Proviso.

Section 32. All witnesses required to recognize, either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law: *Provided, however*, that it shall not be competent, to require sureties of any witness, who does not reside within the State, and within fifty miles of the place where the examination is made.

Magistrate to make return to court.

Section 33. All examinations and recognizances touching criminal offences, shall be certified by the magistrate, taking the same, to the court at which the witnesses are bound to appear, on or before the first day of the setting thereof, and if such magistrate shall refuse or neglect to return the same, he may be compelled forthwith by rule of court, and in case of disobedience, may be proceeded against by attachment, as in cases of contempt.

Magistrate.

Section 34. Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself, one or more magistrates of equal grade, and the powers and duties herein above prescribed, may be executed by such magistrates so associated.

Surety may surrender principal.

Section 35. Any surety in a recognizance to keep the peace, or to appear at court and answer a charge of a criminal offence, shall have the same authority and right to surrender his principal, as if he had been bail in a civil case, and upon such surrender, shall be discharged and exempt from all liability, for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered, may be recognized anew, with sufficient sureties, by the sheriff, or any justice of the peace, for the residue of the term for which he was required to keep the peace, or to appear at court, according to the terms of the original recognizance, and thereupon shall be discharged.

CHAPTER TENTH.

Of Grand and Petit Jurors.

Jurors, how selected.

Section 1. It shall be the duty of the sheriffs of the several counties of this State, to obtain biennially, a list of the householders and freeholders within the same; and the sheriffs, judge of the county court, and clerks of the circuit and county courts, shall on the first Monday of May next, or within thirty days therefrom, and biennially thereafter, meet at the office of the clerk of the circuit court, and select from the list aforesaid, the names of such persons as may be adjudged competent to discharge the duties of grand and petit jurors, with honesty, impartiality and intelligence.

A majority to to act, &c.

Section 2. A majority of the officers named in the preceding section, shall proceed to discharge the duties therein required, if all should not attend at the time and place appointed; and the duties required of them shall be considered official, and their respective oaths of office shall be regarded as a pledge for its faithful performance.

Who selected

Section 3. In making the selection as aforesaid, the officers named in the first section, shall select such persons only as they know, or have good reason to believe are possessed of the qualifications aforesaid, and are esteemed in the community for their integrity, fair character and sound judgment.

Ineligible.

Section 4. No person under the age of twenty one years, or above the age of sixty, nor any person continually sick, or who may be diseased at the time of the summons, nor any habitual drunkard, shall be summoned on the jury.

Exempts.

Section 5. The professors and students of universities and colleges, attorneys and counsellors at law during the time they practice their profession, judges of the several courts, ministers of the gospel having charge of churches, practising physicians, teachers and students of academies and common schools, keepers of public mills, commissioners of revenue and roads, members of incorporated fire companies, officers of the United States, secretary of State, and officers of the executive department of the government, clerks of courts and coroners, the president, directors and other officers of incorporated banks, and keepers of ferries, toll bridges and toll gate keepers, shall be exempt by law from serving either as grand or petit jurors; and all the aforesaid persons shall be excluded from serving on juries, unless by the consent of both parties.

List of persons selected.

Section 6. The selection of householders and freeholders made as aforesaid, shall be drawn off in a fair hand, and the list shall contain the christian and surnames at length, of the persons named therein, their respective places of residence, and their several occupations, (if known) and the list shall be filed in the office of the clerk of the county court, within ten days after the selection as aforesaid.

To be deposited in a box.

Section 7. On receiving such list, the clerk of the county court shall write the names of the persons contained therein with their respective places of residence, and their several occupations, (if shewn by the list aforesaid) on separate pieces of paper, and shall roll up or fold such pieces of paper in the same manner, as nearly as may be, so that the name written thereon shall not be visible, and shall deposit such pieces of paper in a sufficient box, from which they shall be drawn as hereinafter provided.

Jury to be drawn.

Section 8. At least thirty days previous to the sitting of any term of the circuit court in the several counties, it shall be the duty of the clerk of the county court, in the presence and with the assistance of the sheriff, judge of the county court, and clerk of the circuit court, to draw the names of twenty-four persons from the box in which the pieces of paper shall have been deposited as aforesaid, to serve as grand jurors at such circuit court.

How conducted.

Section 9. The drawing of grand and petit jurors shall be conducted as follows:

Box.

First—he shall shake the box containing the names of the jurors, so as to mix the slips of paper on which the names are written, as much as possible;

Names.

Second—he shall then publicly draw out of the said box as many of the slips of paper containing such names, as there shall be jurors required by law, or specially ordered for such court;

Minute to be kept.

Third—a minute of the drawing shall be kept by one of the attending officers. in which shall be entered the name contained on every slip of paper so drawn, before any other slip shall be drawn;

If insane, &c.

Fourth—if, after drawing the whole number required, the name of any person shall appear to be drawn, who is dead, or become insane, or who has permanently removed from the county, or is otherwise disqualified, an entry of such fact shall be made in the minute of the drawing, and the slip of paper containing the name of such persen shall be destroyed;

Draw until the number shall be completed.

Fifth—another name shall be drawn in place of that destroyed, which shall be in like manner entered on the minutes of the drawing;

Sixth—the same proceedings shall be had as often as may be necessary, until the whole number shall be drawn;

Minute to be signed.

Seventh—the minute of the drawing shall then be signed by the clerk and the attending officers, to filed in the office of the clerk of the county court;

List to be made out.

Eighth—a list of the names of the persons so drawn, with their places of residence, shall be made out and certified by the attending officers, and the clerk of the county court, who shall deliver the same to the clerk of the circuit court.

Clerk of circuit court to issue venire facias.

Section 10. Upon the receipt of such list it shall be the duty of the clerk of the circuit court, forthwith to issue a writ of *venire facias*, in the body of which he shall recite at length, the names, places of residence and occupations of the several persons named therein: Such *venire facias* shall be addressed to the sheriff of the county, if any there be, (if none, then to the coroner,) requiring him to summon the persons whose names are therein mentioned, to appear and serve on the grand jury, for the term of the circuit court next thereafter to be holden.

Writ to be served, &c.

Section 11. The officer to whom such writ of *venire facias*, shall be addressed, shall summon the persons therein named, at least three days previous to the sitting of the court, at which their attendance is required, by giving personal notice to each person, or by leaving a written notice at his place of residence, with some person of proper age; and such officer shall return the writ of *venire facias* to the court, at the opening thereof, specifying those who were summoned.

Jurors failing to attend.

Section 12. The court to which any such writ shall be returned, shall impose a fine of not less than fifty and not exceeding one hundred dollars, upon any person duly summoned as a grand juror, who shall without reasonable cause, neglect to attend, and shall enter a judgment for the fine so imposed, conditioned that the State shall recover the same, for the use of the county, unless such defaulting grand juror shall, upon *scire facias* to be made known, appear at the next term of the circuit court, and shew good cause for his non-attendance; and it shall be the duty of the clerk, after the rising of the court, to issue a *scire facias* upon each judgment rendered against defaulting jurors: *Provided*, that if the juror summoned, shall render a sufficient excuse, to a court trying the same, he shall be exempt from all cost, when the fine is remitted.

Proviso.

Court may discharge jurors.

Section 13. The court may discharge a person from serving as a grand juror, who does not possess the requisite qualifications, or who is exempt or disqualified for such service, or for any reasonable and proper cause, to be judged of by the court.

Grand jurors discharged.

Section 14. When any person drawn as a grand juror shall not attend the court for which he was drawn, or shall be excused for the term, his name shall be returned to the box of undrawn ballots, and the clerk of the circuit court shall furnish the clerk of the county court with a list of the names of all persons thus excused or not attending; but when any person drawn as a grand juror, shall be discharged by the court, or excused from attending on account of any disqualification, or for any other cause not being of a temporary nature, the ballot containing the name shall be destroyed.

Grand jury.

Section 15. There shall not be more than twenty-three nor less than thirteen persons sworn on any grand jury; from the persons summoned to serve as grand jurors, and appearing, the court shall appoint a foreman, and they shall also appoint a foreman in every case, where any person already appointed shall be discharged or excused, before the grand jury are dismissed.

When deficient in number.

Section 16. If at any circuit court, there shall not appear at least thirteen persons duly qualified to serve as grand jurors, who shall have been summoned for that purpose, or if the number of grand jurors attending, shall be reduced below thirteen, by any of them being discharged or otherwise, such court may by an order to be entered on its minutes, direct the sheriff to summon twice the number of persons necessary to complete the grand jury, from the citizens of the county qualified to serve.

Sheriff to summon.

Section 17. The sheriff shall summon such jurors accordingly who shall be bound forthwith to attend, and serve (if drawn) unless excused by the court in the same manner, and subject to the same penalties for neglect, as herein before provided, in the case of persons duly drawn and summoned.

Section 18. If a larger number of grand jurors attend than the court shall require to compose the grand jury, the names of the grand jurors shall be written on slips of paper, folded or rolled up

Sheriff to draw.

in ballots, as near alike as may be, and placed in a box or something substituted therefor; from these ballots, the sheriff, under the direction of the court, shall draw a sufficient number of names to complete the grand jury.

Oath of foreman.

Section 19. The following oath or affirmation, shall be administered to the foreman of the grand jury: 'You, as foreman of the grand jury for the body of the county of —— do solemnly swear, or affirm, (as the case may be) that you will diligently inquire and true presentment make, of all such matters and things, as shall be given you in charge, or otherwise come to your knowledge; the States' counsel, your fellows, and your own, you shall keep secret; you shall present no person for envy, hatred, or malice; neither shall you leave any person unpresented, for love, fear, favor, affection, reward or the hope thereof; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding.' Each of the other jurors shall then be called, and the following oath or affirmation administered to them, viz: 'The same oath or affirmation, which your foreman has taken on his part, you and each of you, on your behalf respectively, shall well and truly observe and keep.'

Of jurors.

Oaths to witness.

Section 20. The foreman of every grand jury, while the grand jury are in session, the attorney general, solicitor, or other prosecuting officer, who shall be before them, shall have authority to administer all oaths and affirmations, in the manner prescribed by law, to witnesses, who shall appear before such jury, for the purpose of testifying in any matter of which they may have cognizance; and the foreman shall return to the court a list, under his hand, of all the witnesses, who may have been sworn before the grand jury during the term, and the same shall be filed of record by the clerk.

Subpœnas for witnesses.

Section 21. The attorney general, solicitor, or other prosecuting officer, is authorized to issue subpœnas, for the purpose of compelling the attendance of witnesses, to give evidence before the grand jury, and witnesses summoned under such subpœnas, shall be subject to the same penalties; (to be inflicted by the circuit court) for disobedience, as if they had been issued by the clerk of the court.

Attend grand jury.

Section 22. It shall be the duty of the attorney general, solicitor, or other prosecuting officer, whenever required by the grand jury, to attend them, for the purpose of examining witnesses in their presence, or of giving them advice about any legal matter, and to issue subpœnas to bring witnesses before them.

Att'y general, &c. to give evidence.

Section 23. The attorney general, solicitor, or other prosecuting officer, shall be allowed at all times to appear before the grand jury, on its request, for the purpose of giving information relative to any matter cognizable by them, and may be permitted to interrogate witnesses before them, when the grand jury shall deem it necessary; but neither the attorney general, solicitor, or other prosecuting officer, constable, or any other person, except the grand jurors, shall be permitted to be present, during the expression of their opinions, or the giving of their votes upon any matter before them.

Offences during sitting of court.

Section 24. If any offence shall be committed during the sitting of any circuit court, after the grand jury attending such court, shall have been discharged, such court may, in its discretion, by an order, to be entered on its minutes, direct the sheriff to summon not less than thirteen, and not exceeding twenty-three citizens of the county, possessing the requisite qualifications of grand jurors, and the sheriff, shall accordingly, forthwith summon of the inhabitants of the county, qualified as aforesaid, the number designated, who shall be returned and sworn, and shall proceed in the same manner, in all respects, provided by law for other grand jurors.

Grand jury may require witness to give evidence.

Section 25. Whenever the grand jury deem it necessary, they shall be authorized to require any witness, giving evidence before them, on leaving the jury room to go into court, forthwith, and recognize for his appearance from day to day, during the term, to give evidence touching the case in which he has testified before them, and in order to insure such recognizance from such witness, it shall be the duty of the constable attending the grand jury, to conduct him before the court.

Special courts—jurors to be drawn.

Section 26. Previous to any extra or special term of the circuit court, to be holden in any county in this State, it shall be lawful for the presiding judge, if he deem it necessary, to order the sheriff, judge of the county court, clerk of the circuit or county court, forthwith to draw forty-eight persons, inhabitants of the county, duly qualified by law to serve on juries, and the persons so drawn shall be summoned, as before provided; and from the number of those in attendance there shall be drawn, not less than thirteen and not more than twenty-three, who shall be impannelled and sworn as grand jurors, at such special or extra term, and shall have the same power, and be governed by the same laws, as other grand juries are, and the residue of the persons attending shall be placed on the petit jury for the term.

Petit jurors to drawn.

Section 27. At the time of drawing the names of grand jurors to attend upon any regular term of the circuit court as aforesaid, the clerk of the county court in the presence of, and with the assistance of the officers who shall have attended for the purpose of drawing the grand jury for such court, shall proceed and draw the names of thirty-six persons, from the box containing the names from which the grand jurors were drawn, to serve as petit jurors at such court, which jurors shall not be required to serve but one week; and if the court may, by law, sit more than one week, thirty-six jurors may be drawn and summoned for each succeeding week which such court may sit; but if the service of such additional jurors should not be required by the adjournment of the court, ballots containing their names shall be returned to the box whence they were drawn.

Drawing to be like that of grand jurors.

Section 28. Such drawing shall be conducted in all respects, in the manner prescribed by law for drawing grand jurors; a minute of such drawing shall be kept, signed and filed in like manner, and a list of the persons so drawn with their places of residence and respective occupations, shall be made out and certified by the clerk of the county court and the attending officers, as far as these may be ascertained by the ballots drawn from the box containing their names, and such list shall be delivered to the clerk of the circuit court, who shall issue a writ of *venire facias*, requiring the persons therein named, to be summoned as directed in the case of grand jurors.

Summoned three days before court.

Section 29. The sheriff shall summon the persons named in such list to attend the court as jurors, at least three days previous to the sitting of the same, and shall return such list to the court at the opening thereof, specifying those who were summoned; and the clerk of the circuit court shall furnish the clerk of the county court with a list of the names of such jurors as may fail to attend or be excused by the court, who shall deposit their names in the box as in the case of grand jurors.

Penalty for default.

Section 30. If any person duly drawn and summoned to attend as a juror as aforesaid, shall neglect to attend without a sufficient excuse, he shall be fined in the sum of fifty dollars, for which the like judgment shall be rendered, and the like proceedings had, as is provided in the case of defaulting grand jurors.

Petit jurors to be drawn.

Section 31. On the day when the jurors are summoned to attend at any circuit court, the clerk shall prepare by lot a list of their names, and the first twelve in the list who are not excused shall be sworn and impannelled as a jury for the trial of causes, shall be called the first jury; the next twelve on the same list shall then be sworn and impannelled in like manner, and shall be called the second jury; and if there are any supernumerary grand or petit jurors, they may be placed upon a third jury, if it be necessary for the dispatch of business, or they may be put on either of the juries as occasion shall require, in the place of any who are absent, or may be challenged: *Provided*, that nothing herein contained shall prevent the transferring of jurors from one jury to another, when the convenience of the court or of the jurors, or the course of business may require.

Proviso.

Deficient in number.

Section 32. When by reason of challenges or otherwise, a sufficient number of jurors duly drawn and summoned, cannot be obtained for the trial of any cause, civil or criminal, or for the execution of a writ of inquiry, the court shall cause jurors to be summoned from the by standers, or from the county at large, to complete the pannel.

Jurors, how procured.

Section 33. Whenever it shall happen, that all the regular jurors attending upon the court, shall be engaged out of court, in the trial of issues of fact, or in the execution of writs of inquiry, the court to prevent a suspension of business, may order the sheriff to summon from time to time, a sufficient number of jurors, to complete one or more juries, as occasion may require; and jurors so summoned, sworn and impannelled by the court, shall possess and exercise the duties of jurors summoned as herein before directed.

Neglect of duty of officers.

Section 34. When by a neglect of any of the duties required to be performed, by any of the officers or persons herein before mentioned, the grand or petit jurors to be returned to any circuit court shall not be duly drawn and summoned to attend the court, every person guilty of such neglect, without any just cause therefor, shall pay a fine not exceeding five hundred dollars, to be imposed by such court, and the judgment therefor shall be conditional, as in the case of a defaulting grand juror, and the same proceedings shall be thereupon had, before it shall be made absolute.

Qualifications

Section 35. All persons summoned under the provisions of this chapter, whether as grand or petit jurors, shall possess the qualifications required in the first and third sections of this act, and be free from the objections contained in the fourth and fifth sections of the same.

Explanatory.

Section 36. The foregoing provisions so far as they prescribe a time for the drawing and summoning of grand and petit jurors, shall be construed as merely directory, and such juries drawn and summoned, whether at an earlier or later day, shall be deemed legal and possess the power and perform the duties pertaining to grand and petit juries; and if, in consequence of the neglect of the clerk of the county court, and the officers who are required to co-operate with him, or a majority of them, no grand or petit jury shall be returned, to serve at any term of the circuit court, such court shall be vested with power and authority to issue an order to the sheriff, to summon twenty-four householders and freeholders, in every respect qualified to discharge the duties of grand jurors; and an order shall also be directed to the sheriff, requiring him forthwith, to summon thirty-six householders and freeholders, with like qualifications to serve on the petit jury; and if the term of the court shall be of more than one week's continuance, an order similar to the last shall be issued to the sheriff from time to time, requiring him to summon thirty-six jurors for each succeeding week of the term.

Ballots to be kept.

Section 37. The ballots to be drawn from the box, containing the names of the householders and freeholders, as aforesaid, shall be placed in another box, and the persons whose names are therein written, shall not be required to serve as grand or petit jurors, until all the names contained in the first box; shall have been drawn out, or until from the householders and freeholders of the county, a list of names, qualified to serve on juries, shall have been selected anew; but the ballots of drawn names shall not be placed in such other box, until after the adjournment of the circuit court, when it shall be the duty of the clerk of the county court, to ascertain from the clerk of the circuit court, which of the persons drawn were excused, for a cause of a temporary nature, or who failed to attend, or whose services were dispensed with, by reason of the previous adjournment of the court, that he may dispose of the ballots, as by this chapter directed.

Civil cases.

Section 38. In civil cases the court shall on motion of either party examine on oath, any person who is called as a juror, therein to know whether he is related to either party or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any competent evidence in support of the objection; and if it shall appear to the court, that the juror does not stand indifferent in the cause, another shall be called and placed in his stead, for the trial of that cause.

When pannel is set aside.

Section 39. Whenever the pannel or array of grand or petit jurors, or both, summoned to attend any circuit court, shall be set aside upon challange thereto, the court shall forthwith order a grand or petit jury or both, if occasion may require, to be summoned in the same manner, as if no jury had been drawn and summoned, or returned.

Jurors serve but one day.

Section 40. A juror summoned to complete either one of the regular juries for the week or term, or a juror summoned to enable the court to proceed with business, when the regular juries are engaged in the trial of cases, shall not be compelled to serve longer than the day for which he was summoned, unless he should be detained until the next day or longer, in trying an issue, or in executing a writ of inquiry, submitted to the jury of which he is a member.

Talesmen.

Section 41. All such jurors as are described or referred to in the last section, shall be known as *talesmen;* when they serve more than one day, shall be entitled to receive the same *per diem* pay that is allowed to those summoned on the original *venire facias.*

Challenges.

Section 42. It shall not be a cause of challenge to the pannel or array of jurors, that the clerk of the county who drew them, was a party or interested in such cause, or was counsel or attorney for, or related to either party therein; nor shall it be a good cause of challenge to the pannel or array, that the jurors were summoned by the sheriff who was a party or interested in such cause, or related to either party therein, unless it be alledged in such challenge and satisfactorily shewn, that some of the jurors drawn by the clerk were not summoned, and that such omission was intentional:

Proviso.

Provided, however, that no juror whom the sheriff has had a discretion in selecting, shall be competent if objected to by the adverse party, to sit on the trial of any cause, in which the sheriff is a party or interested, or in which any relation of the sheriff is a party on record or in interest.

Talesmen failing to appear.

Section 43. It shall be lawful for the court before which any *talesmen* are summoned to attend, to impose a fine, not exceeding twenty dollars upon all such as are regularly summoned, and do not appear in court when called, or who after appearance, wilfully withdraw themselves during the same day without leave of court;

and for the recovery of a fine imposed in virtue of this section, a conditional judgment shall be rendered, and a *scire facias* issue as in other cases of defaulting jurors.

Fraud by clerk or sheriff.

Section 44. If the clerk of the county court, or sheriff of any county, shall be guilty of any fraud, by practising on the jury box, previously to a draft, or in drawing a juror, or returning into the box the name of a juror, which had been lawfully drawn out, or in drawing and substituting another in his stead, or in any other way in the drawing of jurors, he shall be deemed guilty of a misdemeanor, and on conviction thereof, be fined in a sum not less than two hundred, and not exceeding one thousand dollars, and his office shall be thereby vacated.

Misdemeanor

Section 45. If the clerk of the county court, or sheriff, shall allow any person to examine the ballots, containing the names of the householders and freeholders, from which juries are to be drawn, as aforesaid, to obliterate or withdraw the ballots, or any one of them, or substitute others in their stead, he shall be deemed guilty of a misdemeanor, and on conviction, shall be punished as in the last section provided.

Clerk to administer oath.

Section 46. The clerk of the circuit court, shall in the presence of the court, administer to each of the jurors summoned upon the *venire facias*, for the term or week, as the case may be, before entering on the discharge of their duties, the following oath or affirmation:

Oath.

"You, and each of you, do solemnly swear or affirm, (as the case may be,) that you will, well and truly, try all issues, both in civil and criminal cases, and execute all writs of inquiry, which shall be submitted to you, and left to your decision by the court, during the present term or week, (as the case may be,) and true verdicts render according to the evidence." And the same oath or affirmation, shall be administered to the *tales* jurors, substituting the word, "day," for "term or week."

When the jury is detained.

Section 47. In all cases in which the jury may be detained more than one day by the court, and are not allowed to disperse before returning their verdict, it shall be the duty of the court to make a reasonable allowance, to any person boarding the jury, during the time of their detention, and tax the same in the bill of costs, which shall be paid as other costs in the case.

Boxes to be secured.

Section 48. The boxes required to be provided by the several clerks of county courts, for the safe keeping of the ballots containing the names of jurors as aforesaid, shall be secured with sufficient locks, to which no person but the respective clerks shall have access, and such locks, together with the boxes shall be paid for by the county treasurer.

Jurors for county court, how drawn.

Section 49. At the same time that a jury is drawn for the circuit court, twenty-four jurors, shall, in the same manner, be drawn for the county court, who shall be summoned in the same manner as jurors for the circuit court, and shall be subject to the same fine for non-attendance; and all the rules and regulations in relation to petit jurors in the circuit court, shall extend to, and govern jurors for the county court.

When a juror becomes sick, &c.

Section 50. When a trial shall be commenced in any civil or criminal case, before any court having cognizance of the same, and during the progress of such trial, a juror shall become so unwell, or incapacitated, that in the opinion of the court, he is unable to serve, such juror may be allowed to withdraw, and the sheriff shall be required to summon forthwith, a juror to supply his place, who shall be sworn, and the trial be commenced anew; and the verdict rendered by the jury, shall be as effectual in law, as if there had been no interruption, in the progress of the cause, unless sufficient cause be shewn by either party, for a continuance.

Plea of abatement.

Section 51. No plea in abatement shall be allowed to the array of the grand jury, nor of the disqualification of any member of the same, except at the term at which the indictment is found, and if sustained, either on demurrer or by verdict, the court shall not discharge the accused, but shall hold him in custody, or discharge or bail in bailable cases, to answer to another indictment, at the same, or the next term of the court, and the delay thus occasioned, shall not be computed within any of the acts of limitations barring the prosecution of offences.

Jury in civil cases, how selected.

Section 52. In all civil causes, sounding in damages merely, or where the amount in controversy shall exceed one hundred dollars, either party, at his election, shall be furnished with a list of twenty-four jurors in attendance on such court, from which a jury shall be obtained by the parties alternately striking one from the list until twelve shall be stricken off, the plaintiff commencing (and the jury thus obtained, shall not be further challenged, for any cause.)

Persons indicted for capital offences served with copy of indictmect.

Section 53. Every person who shall be indicted for an offence, capitally punished, shall if in actual confinement have a copy of the indictment and a list of the jury which are summoned for his trial, delivered to him or her at least two entire days before he or she shall be tried for the same; and if such person charged as aforesaid shall not be in actual custody, but shall have counsel in court, whose names are entered of record, such counsel shall be served with a copy of the indictment and a list of the jury, as above provided; but if the pannel be exhausted by challenge or otherwise, it shall not be necessary to furnish the prisoner with a list of the jurors summoned to supply their place.

Jury, how constituted.

Section 54. In order to the trial of the person charged with a capital offence, it shall be the duty of the court in which such trial is to take place, to make an order requiring the sheriff to summon not less than fifty and not exceeding one hundred jurors, including those in attendance on the regular juries for the week or term, and the names of the jurors so summoned, together with those attending upon the regular juries, shall be written upon slips of paper, folded or rolled up, and placed in a box or some substitute therefor, and shaken together, and such person as the court shall designate shall, in its presence, draw out, the ballots one by one, until the jury shall be completed: if all the ballots shall be drawn, and the jury be still incomplete, it shall be the duty of the court to make an order requiring the sheriff to summon at least twice the number of jurors required to complete the jury, from whom the jury shall be completed by drawing as aforesaid.

Peremptory challenges allowed to the accused.

Section 55. Upon a trial for any capital offence, the accused shall be allowed twenty-one peremptory challenges; on a trial for any penitentiary offence, the accused shall be allowed fifteen peremptory challenges; and on a trial for any other offence, six; the State shall be allowed fourteen peremptory challenges, on a trial for a capital offence; ten on a trial for a penitentiary offence; and four on a trial for any other offence: it shall be a good challenge for cause, for either the accused or the State, that the juror has not been a resident householder or freeholder within the county, for two years next preceding the time when he is sworn; second, if he is not a citizen of the United States; third, if he is connected by consanguinity to either the accused, the prosecutor, or the person alledged to be injured, within the ninth degree, computing according to the rules of the civil law, or by affinity to either of the said persons within the fifth degree, computing by the same rules; fourth, if the juror has been indicted within twelve months for an offence of the same nature, of which the accused is charged; fifth, if the juror has when sworn, any fixed opinion as to the guilt or innocence of the accused which would bias his verdict; sixth, if he has any interest in the conviction or acquittal of the accused, or has made any promise or given any assurance, that he will convict or acquit the accused: the four first causes of challenge may be ascertained, by the oath of the juror, or by other evidence; the fifth shall be established alone by the oath of the juror; and the sixth alone by testimony adduced to the court; and in all trials for a capital or penitentiary offence, it shall be a good challenge for cause, if the juror has a fixed opinion against capital or penitentiary punishments, or that a conviction should not be had on circumstantial evidence; which may be ascertained as the four first causes of challenge above.

To be fined for neglect.

Section 56. Every person summoned as a juror, by order of court, for the trial of a person charged with an offence, capitally punished, shall be liable for disobedience or neglect, to be fined in a sum not less than fifty dollars, which fine may be reduced by the court if the circumstances justify a reduction, which shall be collected and applied in the same manner as fines imposed upon jurors in other cases.

CHAPTER ELEVENTH.

Of Indictments.

Indictments.

Section 1. It shall be the duty of the clerk of the circuit court, when an indictment is returned into court by the grand jury, to enter on the minutes of the court, a brief statement of the nature of the indictment, and the finding of the jury, and to indorse on the bill of indictment, that it was filed in court; and if the entry of such finding is omitted at the proper time, it shall and may be lawful for the court, at any subsequent term, on examination into the verity of the indictment and its return, to have the proper entry made *nunc pro tunc.*

Nolle pros.

Section 2. It shall not be lawful for the attorney general, solicitor, or other prosecuting officer, to enter a *nolle prosequi* on any indictment, or in any other way to discontinue or abandon the same, without the leave of the court, having jurisdiction to try the offence charged, being first had, and entered on its minutes.

Name of prosecutor.

Section 3. When any person presents himself as a prosecutor, on an indictment found, or to be preferred, it shall be the duty of the attorney general, solicitor, or other prosecuting officer, to indorse the name of such person as prosecutor, on the indictment; but if no one will consent to become the prosecutor, it shall be the duty of the attorney general, solicitor, or other prosecuting officer, if, in his opinion, the evidence authorizes the conviction of any person supposed to be guilty of an offence, to prefer a bill to the grand jury, without the name of any prosecutor indorsed thereon; and it shall be no objection to any indictment, that the name of the prosecutor is not thereon indorsed.

Writs of capias.

Section 4. A writ, or capias, for the arrest of any defendant indicted, may be issued by the clerk of the court, in which such indictment may be, by any judge of the circuit court, or the judge of the county court of the county in which such indictment may be found, either in vacation, or during the sitting of the court.

Offences.

Section 5. If the offence for which the party so arrested, shall be a misdemeanor, it shall be the duty of the sheriff to take the parties recognizance, with sufficient sureties, in such sum as the character of the prosecution may require, and if the offence is punished, by imprisonment in the penitentiary for life, or a term of years, or is a capital offence, he shall then convey the offender to the common jail, and there keep him in safe custody until discharged in due course of law.

Bail.

Section 6. Whenever any person indicted for any offence, shall be let to bail, the officer taking the recognizance, shall file the same, with the clerk of the circuit court of the county in which the indictment was found, previous to the first day of the next term of that court.

Section 7. It shall be the duty of the clerk of the court, in which an indictment is found, or any proceeding instituted, upon the application of the defendant, gratuitously to issue subpœnas, as well during the sitting of the court, as in vacation, for such witnesses, as such defendant shall require, residing in or out of the county.

Clerk to issue subpœna.

Section 8. The attorney general, solicitor, and every other prosecuting officer, shall have power to issue subpœnas for witnesses, in support of any prosecution, to appear at any court within his circuit; and every such subpœna subscribed by the prosecuting officer issuing the same, shall be as valid and effectual, as if the same had been regularly issued by the clerk of the circuit court; and disobedience thereto shall be punished in the same manner, and upon the like proceedings to be had, as provided by law in cases of subpœnas returnable to any circuit court.

Att'y general may issue subpœna.

Section 9. If a person on his arraignment, shall refuse or neglect to plead, the court shall cause the plea of not guilty to be entered of record, and proceed to the trial of the cause.

Plea of not guilty.

Section 10. No plea in abatement, or other dilatory plea to an indictment, shall be received by any court, unless the party offering such plea, shall verify the same by affidavit, or unless its truth shall appear by some matter of record, or other written evidence accompanying it.

Plea in abatement.

Section 11. Whenever two or more persons shall be charged in the same indictment, and it shall appear that there is not sufficient evidence to put the defendant on his defence, after the testimony for the prosecution shall have closed, and the evidence of such defendent is desired by a co-defendant, it shall be the duty of the court, to direct a verdict of acquittal, in favor of the defendant against whom there is no sufficient proof, and judgment shall thereupon be rendered accordingly.

On trial of defendant.

CHAPTER TWELFTH.

Of the Writ of Habeas Corpus, and proceedings thereon.

Section 1. Every person committed, confined, or in any manner restrained of his liberty, for any matter, either criminal or supposed to be so, or under any pretence whatever, may prosecute a writ of *habeas corpus*, according to the provisions of this chapter, to enquire into the cause of such commitment, confinement or restraint.

May issue.

Section 2. Whenever oath shall be made before any justice of the peace, clerk of the circuit or county court, or before any judge or chancellor, that any free person is detained, or held in illegal custody, by any person, in any other place than the penitentiary, or the common jail of the county, it shall be the duty of such justice of the peace, clerk, judge or chancellor, to issue a writ directed to the sheriff or coroner, commanding him to take into his custody, the person so alledged to be illegally detained or confined, forthwith, to have him before the judge of the county court, or some judge of the circuit court, or some chancellor, as may be

When persons are confined.

most convenient, and such judge or chancellor, shall examine into the cause of the detention, and if the same is illegal, shall discharge the person so detained; if otherwise, he shall by warrant in writing, commit the person to the proper custody.

In county jail.

Section 3. Whenever any person is confined in the county jail, on any cause whatever, other than a commitment for, or a conviction of felony, or by the sentence or decree of the circuit court, or court of chancery, and oath shall be made in the manner hereinafter provided, that his confinement is illegal, it shall be the duty of the judge of the county court, to issue a writ of *habeas corpus*, to cause the person so confined to be brought before him; and if the detention is illegal, he shall be discharged; if otherwise, he shall be committed by warrant, to the proper custody, or admitted to bail, as may be in accordance with law.

On petition and oath made.

Section 4. Whenever any person is confined in the county jail, on any charge whatever, and petition on oath shall be made, in the manner hereinafter provided, that his confinement is illegal, it shall be the duty of any judge of the circuit court or chancellor, to issue a writ of *habeas corpus*, returnable at such time and place as he shall direct, either in term time or in vacation; and the court, judge or chancellor, before whom the writ is made returnable, shall examine into the cause of confinement, which if unwarranted by law, the person confined shall be discharged, and if otherwise, he shall be committed by warrant to the proper custody, or be admitted to bail in accordance with law.

When and how may issue.

Section 5. Whenever any person is confined in the penitentiary on any charge or pretence whatever, and petition on oath shall be made, in the manner hereinafter provided, that his confinement is illegal, it shall be the duty of any judge of the circuit court or chancellor, to issue a writ of *habeas corpus*, returnable to the next ensuing term of the circuit court of Coosa county, and said court shall examine into the cause of confinement, and if illegal, shall discharge, and if otherwise, shall recommit the prisoner, or cause to be instituted such proceedings, as may be necessary to a legal imprisonment.

Application for writ.

Section 6. Application for such writ shall be made by petition in writing, signed either by the party for whose relief it is intended, or by some person in his behalf, and addressed either to the court of chancery, when in session, to the circuit court, and in a proper case, to the county court of the county in which the petitioner is confined or restrained of his liberty; and if neither of these courts are in session, then to the chancellor or judge of the circuit court, or judge of the county court, in the case, in which the last mentioned judge shall have jurisdiction.

Substance of petition.

Section 7. The petition must state in substance:

1st. That the person in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the officer or person by whom he is confined or restrained, and the place where; naming him, if his name is known, or describing him if it is not.

2d. The cause or pretence of such confinement or restraint, according to the best of the knowledge and belief of the petitioner.

3d. If the confinement or restraint is by virtue of any warrant, order or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused, or that for some sufficient reason a demand of such copy could not be made.

4th. It must be verified by the oath of the party or some other person cognizant of the facts stated therein.

Application how made.

Section 8. Whenever application for any such writ shall be made to any magistrate not residing in the county where the prisoner shall be detained, he shall require proof by the oath of the party applying, or by other sufficient evidence, that there is no officer in such county, authorized to grant the writ, or if there be one, that he is absent or has refused to grant such writ, or for some cause to be specially set forth, is incapable of acting; and if such proof be not produced, the application shall be denied.

When made.

Section 9. The application for the writ of *habeas corpus,* when made to a chancellor or judge of the circuit court, shall be made to the chancellor or such judge residing or being nearest the place where the petitioner is confined or restrained of his liberty.

Writ to issue.

Section 10. The court or magistrate to whom such petition shall be addressed, shall without delay, award a writ of *habeas corpus.*

Form of writ of habeas corpus.

Section 11. Every writ of *habeas corpus* issued under the provisions of this chapter, shall be in substance as follows: The State of Alabama—To the sheriff or jailer &c. (as the case may be) of county. We command you that you have the body of C. D. by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged before our court of chancery or circuit court, (as the case may be) or before A. C. chancellor or judge of the circuit court (as the case may be) at &c. on &c. (or immediately after the receipt of this writ) to do and receive what shall then and there be considered concerning the said C. D., and have you then and there this writ. Witness, &c.

Shall be obeyed.

Section 12. The writ of *habeas corpus* shall not be disobeyed for want of form, but when written in terms intelligible, it shall be deemed sufficient.

Return of writs.

Section 13. When such writ is issued in vacation, it shall be signed by the magistrate issuing the same, and when issued in term time, or during the sitting of the court, it shall be signed by the clerk in the same manner as other writs are signed, and in either case shall be served in any county, by any sheriff, or deputy sheriff, or constable of the same or any other county.

When made.

Section 14. If the court to which the writ is returnable shall be adjourned before it is returned, the return shall be made before any judge of the said court, or before any other judicial officer having jurisdiction to inquire of and determine the matter, and if the writ is in any case returned before a judge at a time when the court is in session, he may adjourn the case into the court to be there heard and determined in like manner as if the writ had been returned into the same court.

To make return, and when.

Section 15. Any person to whom the writ is directed shall receive it, and shall make due return thereof, at the day designated therein, if it be practicable to do so, but if no day is appointed in the writ for its return, the same shall be returned within two days after its reception, if the place to which the prisoner is required to be conveyed, does not exceed thirty miles from the place of confinement; if it exceeds thirty and is within one hundred miles, he shall return the writ within five days; if more than one hundred, he shall return it within eight days.

Substance of return.

Section 16. The person upon whom any such writ shall have been duly served, shall plainly and explicitly state in his return,

First—Whether he has or has not the party whose body is required to be brought up, in his custody, or under his power or restraint:

Second—If he has the party in his custody, or under his power or restraint, he shall set forth at large by what authority and the true and entire cause of such imprisonment or restraint, with a copy of the writ, warrant, order or other process, if any, upon which the party is detained, and the original shall be produced on the return of the writ, to the court or officer to whom the same is returnable:

Third—If he has not the party in his custody or power, or under his restraint, and has transferred such custody or restraint to another, the return shall state explicitly to whom, at what time, for what cause, and by what authority such transfer was made.

Shall be signed.

Section 17. The return so to be made as aforesaid, shall be signed by the person making it, and it shall also be sworn to by him, unless he is a sworn public officer, and shall make return in his official capacity: at the time such return is made, the party making it, shall bring the body of the prisoner within his custody or power, or under his restraint, according to the command of the writ unless prevented by sickness or infirmity, which would render his conveyance improper or impracticable.

When prisoner is sick.

Section 18. When from the sickness or infirmity of the party, he cannot without danger, be brought to the place appointed for the return of the writ, that fact shall be stated in the return; and if it is proved to the satisfaction of the court or magistrate, he may proceed to the jail or other place, and there make his examination, or may adjourn the same to another time, or make such other order in the case, as law and justice shall require.

Examination

Section 19. When the writ of *habeas corpus* is returned, the court or judge shall without delay, proceed to examine the causes of the imprisonment or restraint, but the examination may be adjourned from time to time, as circumstances may require, or as the correct administration of the laws may seem to demand.

When a party is detained.

Section 20. When it appears from the petition for a *habeas corpus*, that the party is detained on any process under which any other person has an interest in continuing his imprisonment or restraint, it shall be the duty of the court or magistrate, to indorse on the writ, an order requiring the petitioner, or some one else on his behalf, to give notice to such interested person or his attorney, of the issuance of the writ and the time and place, when and where the same is returnable: the prisoner shall not be discharged until sufficient notice shall have been given to such person or his attorney, if within the State, or within fifty miles of the place of examination, to appear and object to such discharge if he thinks fit.

When imprisoned.

Section 21. When it appears from the petition, that the party complaining is imprisoned on any criminal accusation, the court or judge awarding the writ, shall indorse on the same an order requiring the prisoner or some one on his behalf, to give notice to the solicitor or attorney general, (as the case may be) of the time and place, when such writ is returnable, in order that he may appear and object to the discharge if he think proper; and it shall furthermore be the duty of the prisoner or some one on his behalf, to give notice of similar import to the prosecutor, or principal agent in procuring his arrest; and such court or magistrate shall not discharge any prisoner until sufficient notice shall have been given as aforesaid: *Provided, however*, that if the prosecutor shall reside more than fifty miles from the place where the writ is returnable, that it shall not be incumbent on the prisoner to shew that he has had notice.

Proviso.

Subpœnas for witnesses.

Section 22. When any writ of *habeas corpus* shall have been issued and made returnable at any particular time and place, it shall be the duty of the court or magistrate issuing the same, or any justice of the peace of the county in which a witness may reside, to issue subpœnas for such witnesses as shall be deemed necessary, either on the part of the State or of the defendant; which subpœnas shall be directed to the sheriff or some constable of the county, in which such witnesses may reside, commanding such sheriff or constable, (as the case may be,) to summon such witness or witnesses, to appear at the time and place, the said writ is made returnable, then and there to testify and give evidence, either in behalf of the prisoner or the State; and such sheriff or constable shall be allowed the same fees therefor, as for serving subpœnas in other cases, and every witness so summoned, shall be bound to attend under the penalty prescribed for the compulsion of the attendance of witnesses in State cases in the circuit courts, and for his or her attendance shall be entitled to the same fees that are allowed by law for witnesses in such cases.

Proceedings.

Section 23. On the failure of any witness to attend at the time and place required by such subpœna, it shall be the duty of the court or magistrate to record such failure, and to transmit, either the original, or a copy of such record to the clerk of the circuit court of such county, in which the examination took place; and it shall be the duty of the clerk of the circuit court forthwith to issue a writ of *scire facias*, requiring the defaulting witness to appear at the next succeeding court to shew cause why the forfeiture so recorded, as aforesaid, should not be made absolute.

Proof of witness.

Section 24. It shall be the duty of the court or magistrate before whom any witness may be summoned, as aforesaid, to appear and give evidence, to permit such witness to prove his attendance, and transmit the same to the clerk of the circuit court, to the end that it may be taxed in the bill of costs, if the petitioner should be ultimately convicted.

Party imprisoned.

Section 25. The party imprisoned or restrained, may deny any of the facts set forth in the return, and may alledge any other facts, that may be material in the case, and the court or magistrate, shall proceed in a summary way to examine the causes of imprisonment or restraint, and hear the evidence that may be produced, by any person interested, or that may be authorized to appear, both in support of such imprisonment or against it, and thereupon to dispose of the party, as law and justice shall require; and if no legal cause be shewn for the imprisonment or restraint, the court or judge shall discharge the party therefrom.

Court may issue subpœnas.

Section 26. The court or magistrate, before whom the writ of *habeas corpus* may be returnable, shall be authorized upon the return of such writ, to issue supœnas for witnesses, in the same manner as if the application had been made therefor previously and they shall be directed and served in the same manner; and for disobedience to which there shall be the same penalty, and for serving which the same fees shall be allowed, and the witnesses shall be entitled to the same compensation, as is provided for witnesses in State cases in the circuit courts: *Provided, however*, that the court or magistrate, shall not be obliged to issue supœnas, as provided for in this section, unless they believe that the correct administration of law and justice require it, and that the parties are not greatly in fault in not having previously applied for them.

Proviso.

When committed on a criminal charge.

Section 27. When any person is committed to jail on any criminal accusation for want of bail, it shall be competent for the sheriff of the county, from which he is sent, or to which he is committed, to admit him to bail by taking his recognizance, with sufficient sureties, in such sum as may have been required by the court or magistrate who committed him; and if no sum was prescribed by such court or magistrate, then the clerk of the circuit court and sheriff shall, upon a view of the evidence taken down in writing, by the committing magistrate, prescribe the sum in which the prisoner shall be recognized, as aforesaid: *Provided, however*, that, if in the opinion of the prisoner, the bail required of him, be excessive, he may prosecute his writ of *habeas corpus*, as herein before provided, that the penalty prescribed for the recognizance may be lessened.

Proviso.

If bailable.

Section 28. It shall be the duty of every court or magistrate before whom an inquiry shall be made into the case of one charged with a criminal offence, which is bailable, to admit to bail, if sufficient bail be offered; and if not, it shall be the duty of such court or magistrate, to indorse on the warrant of commitment, the sum for which bail was required, and the court before which the prisoner shall appear to answer.

On mesne process.

Section 29. If the party complaining is committed on *mesne process* in any civil action for want of bail, and it shall appear that the sum for which bail is required is excessive and unreasonable, the court or magistrate awarding a *habeas corpus*, shall decide what bail is reasonable, and shall order that on giving such bail the party shall be discharged.

Unlawfully prisoned, &c.

Section 30. If the party is lawfully imprisoned and restrained, and is not entitled to enlargement on bail, he shall be remanded to the prison or person from whose custody he is taken, or to such other person or officer as by law is authorized to detain him.

How prisoner may be kept.

Section 31. Until judgment be given upon an examination on *habeas corpus*, the court or magistrate may remand the prisoner, or may commit him to the sheriff of the county, or continue or place him under such other custody as the circumstances of the case may require, or if the charge be of a character to authorize it, may recognize him to appear from day to day.

Penalty on officer.

Section 32. Any officer who shall refuse or neglect, for six hours, to deliver a true copy of the warrant, order or process, by which he detains any prisoner, either to such prisoner, or to any person who shall demand such copy, on his behalf, shall forfeit and pay to such prisoner, the sum of two hundred dollars, to be recovered by action of debt, and shall also be guilty of a misdemeanor, and on conviction, shall be fined not less than fifty, and not exceeding five hundred dollars: *Provided*, that such officer shall not be required to deliver, notwithsatnding any number of demands therefor, more than two copies of such warrant, order or process.

Proviso.

Persons to whom writs are directed.

Section 33. If any person to whom a writ of *habeas corpus* shall be directed, shall refuse to receive the same, or shall neglect to obey and execute it according to the provisions of this chapter, and no sufficient excuse shall be shown for such refusal or neglect, the court or magistrate before whom the writ is returnable, shall proceed forthwith, by process of attachment, as for a contempt, to compel obedience to the writ, and punish the person guilty of such contempt; and such person shall also be guilty of a misdemeanor, and on conviction, shall be fined not less than fifty and not exceeding five hundred dollars, and in addition shall answer in damages to the party aggrieved.

When attachment shall issue.

Section 34. If such attachment shall be issued against a sheriff, or his deputy, it may be directed to any coroner, or to any other person designated therein, who shall have full power to execute the same; and if the sheriff, or his deputy, shall be committed upon such process to the jail of his own county, the coroner or jailer, if any there be, shall be the keeper of such jail, uncontrolled in any manner by the sheriff.

Upon refusal or neglect, &c.

Section 35. Upon such refusal or neglect, of the person to whom the writ of *habeas corpus* is directed, the court or magistrate may also issue a precept, to any officer, or other person to be designated therein, commanding him to bring forthwith before such court or magistrate, the person for whose benefit the writ was issued, and the prisoner shall, thereupon, be discharged, bailed, or remanded in the same manner, as if prompt obedience had been yielded to the writ of *habeas corpus*.

Section 36. If any one who has in his custo

power, any person entitled

writ h

Penalty on officers, &c.

such writ, or with intent to avoid the effect thereof, transfer such prisoner to the custody, or place him under the power or control of any other person, or conceal him, or change the place of his confinement, the person so offending, shall forfeit and pay to the party aggrieved thereby, the sum of five hundred dollars, to be recovered by action of debt, and shall also be guilty of a misdemeanor, and on conviction be fined not less than fifty, and not exceeding five hundred dollars; and every one who shall knowingly aid and assist in a violation of the provisions of this section, he shall be deemed guilty as a principal offender, and punished accordingly, and shall be imprisoned in the county jail twelve months.

How writ may be served.

Section 37. Every writ of *habeas corpus* issued pursuant to this chapter, may be served by delivering a copy of the same, and showing when demanded, the original, to the person to whom it is directed, and if he cannot be found, it may be served by being left at the jail, or other place, in which the prisoner may be confined, with any officer, or other person of proper age, having charge for such time of the prisoner.

If party be concealed.

Section 38. If the person upon whom the writ ought to be served conceal himself, or refuse admittance to the party attempting to serve the same, it may be served by affixing a copy of the writ to some conspicuous place on the outside either of his dwelling house, or of the place where the party is confined.

Cases in civil process.

Section 39. If it appears on the return of the writ of *habeas corpus* that the prisoner is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him authorized by law, such prisoner can only be discharged in one of the following cases; first, when the jurisdiction of such court has been exceeded, either as to matter, place, sum or person; where, though the original imprisonment was lawful, yet by some act, omission or event which has subsequently taken place, the party has become entitled to be discharged; second, when the process is defective in some matter of substance, rendering such process void; third, where the process though in proper form has been issued in a case not allowed by law; fourth, where the person having the custody of the prisoner under such process, is not the person empowered by law to detain him; fifth, where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law; but the court may, in all cases previous to a trial and conviction for any offence, on a full and fair hearing under a writ of *habeas corpus*, admit the party accused to bail, if the circumstances justify bail, in the sound discretion of the court.

In criminal cases.

Section 40. No person imprisoned for any criminal, or supposed criminal offence, shall be discharged for any irregularity in the process, order, or warrant of commitment; but it shall be the duty of the court or magistrate awarding a *habeas corpus*, or before whom the same is returned, to inquire into the facts and circumstances of the case, and either discharge, admit to bail, or remand the prisoner, as law and justice may require.

Section 41. No person who has been discharged upon a *habeas* *corpus* shall be again restrained, or imprisoned for the same cause, unless he shall be indicted therefor, or after a discharge for a defect of proof, he shall be again arrested on sufficient proof, and committed by legal process for the same offence. **Discharge.**

Section 42. The recognizance taken before any court or magistrate, for the appearance of a prisoner, brought up on *habeas corpus*, shall be transmitted by him, together with all the proceedings touching the examination, to the clerk of the court, before which such prisoner is bound to appear, and such recognizance shall have the same force, and be proceeded on in the same manner, as other recognizances taken in State cases. **Proceedings.**

Section 43. If any sheriff, other officer, or person, having the custody of one brought up on *habeas corpus*, shall detain him after an order of the court, or magistrate, for his discharge, or enlargement, or shall afterwards arrest him without a legal and proper cause, warrant, or other precept, such sheriff, other officer, or person, shall be guilty of a misdemeanor, and on conviction, be fined not less than fifty, and not exceeding five hundred dollars, and in addition thereto, shall be answerable for any damages such party may have sustained. **Officers detaining prisoners.**

Section 44. Every person who shall knowingly aid and assist in violating the mandate of the writ of *habeas corpus*, or any order thereupon made, or shall knowingly aid, or assist, in the commission of the offence, in the last section provided, shall be deemed guilty as a principal offender, and punished accordingly. **Abettors.**

Section 45. The sheriff or other person having charge of a prisoner, directed to be brought up on *habeas corpus*, is authorized to summon a sufficient guard, to aid him in conveying such prisoner before the court or magistrate before whom the writ is returnable, and any person summoned as a guard, shall for disobedience, be subject to the same penalty, as guards are, who refuse to assist the sheriff in conveying convicts to the penitentiary. **Summon guard.**

Section 46. The sheriff and guard shall be entitled to the same compensation, as is allowed for conveying convicts to the penitentiary, and shall be paid in the same manner. **Compensation.**

CHAPTER THIRTEENTH.

Of Writs of Error, and a reference of Novel and Difficult Questions.

Section 1. Whenever in any criminal case, either on the trial, or on demurrer, or motion in arrest of judgment, any point or question shall arise, which in the opinion of the presiding judge, is novel and difficult, it shall be his duty, on request, to reserve such point or question, distinctly upon the record, for the revision of the supreme court, at its next succeeding term, and the presiding judge shall proceed to render judgment on the conviction; but the execution of the judgment shall be suspended, in cases not capital, or not punished by confinement in the penitentiary, until the next succeeding term of the circuit court rendering the judgment; and the defendant shall be recognized, in good and sufficient sureties, then to appear and abide the judgment so rendered; and in capital cases, or in cases punished by confinement in the peni- **Novel and difficult questions.**

tentiary, the execution of the judgment shall be suspended to a time not less than twenty-five nor more than forty days after the commencement of the next succeeding term of the supreme court.

Writs of error.

Section 2. Writs of error upon judgments rendered on any indictment, may issue upon an order to that effect, addressed to the clerk of the court, in which such judgment is rendered, by any one of the judges of the supreme court in vacation, or by the supreme court when in session; but such writs shall only be granted upon a view of the transcript, and at the discretion of the judge or court applied to for that purpose.

Writs granted in vacation.

Section 3. It shall be the duty of any judge of the supreme court, who shall award a writ of error in vacation, to cause an entry of the same to be made on the minutes of the supreme court at its next term; and all writs of error, which are not prosecuted at the term of the supreme court to which they are returnable, shall be *non prossed*, and no writ of error shall thereafter be allowed.

Order for writ

Section 4. When an order shall be made, for the allowance of a writ of error as aforesaid, the same shall be filed with the clerk of the court, in which the judgment was rendered, who shall furnish to the party filing the same, the certificate of the filing thereof, together with a copy of the order, and shall make out a writ of error, and transcript of all the record and proceedings had in the case, and after having attached such transcript to the writ, as provided in civil cases, he shall deliver the same on demand, to the party suing out the writ of error.

Sheriff to suspend execution.

Section 5. If the defendant in the case for the removal of which such writ of error shall be allowed, be in the custody of the sheriff of the county, and the order of allowance direct a stay of proceedings on the judgment, it shall be the duty of the sheriff, on being served with the clerk's certificate of such writ being filed, and a copy of the order of allowance, to keep such defendant in his custody without executing the sentence which may have been passed upon the conviction, and to detain such defendant to abide such judgment as may be rendered upon such writ of error.

Party admitted to bail.

Section 6. If the offence charged for the removal of which such writ of error shall be allowed, be punishable by fine, or by fine and imprisonment in the county jail, any judge or court herein authorized to allow such writ of error, shall in the order of allowance, direct the clerk of the circuit court, to admit to bail the party suing out the writ of error, upon a recognizance with sufficient sureties, conditioned, that he shall submit to and abide by the judgment which the supreme court may render on such writ of error: and further, that he will appear at the next term of the court in which he was convicted, and deliver himself into custody, or that he will obey such legal order as the last mentioned court shall make in the premises.

Transcript.

Section 7. No assignment of errors, or joinder in error, shall be necessary in any writ of error, issued in pursuance of the foregoing provisions, but the court shall proceed to examine the transcript, and to render such judgment on the record before them, as is demanded by law.

Section 8. If the supreme court shall affirm such judgment, it shall direct the sentence pronounced to be executed, and the same shall be executed accordingly: if the supreme court shall reverse the judgment rendered, it shall either direct a new trial, or that the defendant be absolutely discharged, or that he shall be held in custody until discharged by due course of law. Proceedings after judgment.

Section 9. When the day appointed by any sentence for its execution shall have elapsed, the supreme court shall in the event of the affirmance of the judgment, prescribe by its judgment a day for the execution of the sentence. Execution.

CHAPTER FOURTEENTH.

Of Pardons and Reprieves.

Section 1. The rules and regulations under which the pardoning power vested by the constitution in the Executive shall be hereafter exercised, shall be the following, and in no other case shall a pardon, or remission in whole or in part, of any sentence or fine be granted: Rules for the exercise of the pardoning power.

First. Where the judge presiding on the trial, and a majority of the jury who tried the cause, shall during the term at which the trial was had, in writing signed by them, recommend the prisoner to the mercy of the Executive, or a commutation of the punishment from death to a term of years, or for life; and when such recommendation to mercy is made, the clerk of the court shall officially certify thereon, that the signatures thereto were acknowledged, or proved by witness (sworn by him) to be genuine: First.

Second. When it shall be made to appear to the satisfaction of the executive, that important witnesses for the prisoner could not be obtained by him, at the trial of the cause, whose testimony if before the jury, would, in the opinion of the Executive, have varied the result; but in such case the affidavit of such absent witness if practicable, shall always be required, and his absence from the trial satisfactorily accounted for. Second.

Third. When by the sworn testimony of creditable persons, it shall be made to appear to the satisfaction of the Executive, that some fact has transpired, subsequent to the trial, establishing the innocence of the prisoner, or rendering his guilt doubtful; and any one swearing falsely in any matter made necessary by this law, to obtain a pardon, commutation of punishment, or remission of a fine, and being thereof convicted, shall be held guilty of perjury, and punished by imprisonment in the penitentiary, not less than two nor more than seven years. Third.

Section 2. It shall be the duty of the Executive, to cause to be entered at large in a book to be kept for that purpose, his reasons for granting a pardon, commuting a sentence, or remitting a fine, and to preserve on file, all documents and papers on which he acted. Reasons to be recorded.

Section 3. Nothing herein contained shall be so construed, as to prevent the Executive from delaying the sentence of a court, by granting a reprieve. Executive may delay.

Section 4. It shall be lawful for the Executive, to remit a portion of the sentence of imprisonment of any convict, upon the re-

May remit sentence. commendation of the board of inspectors, setting forth that the convict thus recommended to the mercy of the Executive, has behaved in an exemplary manner during his confinement, and that in their opinion, his enlargement is not inconsistent with the public welfare; but no such pardon shall be granted, until the convict has remained one third part of the time for which he was sentenced; and where a convict is sentenced to imprisonment for life, or for more than twenty one years, seven years shall within the purposes of this section, be considered as one third of his sentence.

CHAPTER FIFTEENTH.

Of Slaves, and Free Negroes.

Insurrection. Section 1. Every slave who shall consult or conspire to rebel or be in anywise concerned in an insurrection or rebellion of the slaves against the white inhabitants of this State, or the laws and government thereof, or shall conspire the murder of any white person and be thereof convicted, shall suffer death.

Murder. Section 2. Every slave who shall be guilty of murder, or commit an assault with an intent to kill any white person, or shall be guilty of the voluntary manslaughter of a white person, or of the involuntary manslaughter of a white person in the prosecution of an unlawful act, and be thereof convicted, shall suffer death.

Rape. Section 3. Every slave, free negro, or mulatto, who shall commit, or attempt to commit the crime of rape on any white female, and be thereof convicted, shall suffer death.

Burglary, robbery, mayhem. Poisoning. Section 4. Every slave who shall commit the crime of burglary or who shall rob, or commit an assault and battery with intent to rob any white person, or shall wilfully maim, put out an eye, or cut, or bite off the lip, ear, or nose, of any white person, or shall attempt to poison, or to deprive any white person of life, by any means, not amounting to assault, and be thereof convicted, shall suffer death.

Arson. Section 5. Every slave who shall willfully and maliciously sit fire to, or burn any dwelling house, or out house appurtenant thereto, store house, office, bank house, ware house, or other edifice public or private, corn crib, gin house, cotton house, stable, barn, cotton in the heap of the value of one hundred dollars, or in bale, or any ship, steamboat, or other water craft, used in navigating the waters of this State, and be thereof convicted, shall suffer death.

Accessories. Section 6. All accessories before the fact, to any of the crimes heretofore enumerated, shall be deemed principals and may be tried, though the principal offenders be not taken or convicted.

Manslaughter Section 7. Every slave who shall be guilty of the manslaughter of a slave, free negro, or mulatto, and be thereof convicted, shall be punished by any number of stripes, not exceeding thirty-nine, or be branded in the hand or both, at the discretion of the jury.

Perjury. Section 8. Every slave who shall commit the crime of perjury, shall be punished with thirty-nine lashes, and branding in the hand with the letter P.

Section 9. Whenever a slave shall be a witness in any cause, it shall be the duty of the presiding judge to explain to him or her the nature of the oath about being administered; and also state to him or her, the punishment for swearing falsely; and if the court before whom any slave is sworn, shall have reason to believe that he or she has sworn falsely, it shall be the duty of the court to direct him or her to be taken into custody, and as soon as practicable to cause a jury to be empannelled to try the fact, and if such slave be found guilty, the court shall, without delay, cause the proper punishment to be inflicted.

Oath to be explained, &c.

Section 10. The trial of all slaves for capital offences shall be by the circuit conrt of the proper county, in the mode now provided by law for the trial of white persons; but on such trial the slave shall be allowed but twelve peremptory challenges, and the State but four, and at least two-thirds of the jury shall be slaveholders; but if there be an actual or threatened rebellion of the slaves of this State, it shall be the duty of any justice of the peace, before whom any slave or free person of color, is brought, charged with a capital offence, if there be probable grounds for believing him or her guilty of the offence charged, to commit him or her to the county jail, and appoint a time for the trial of the offence not more than fifteen days from the commitment; it shall also, at the same time be the duty of such justice to give a notice of the time of trial, to the judge of the county court, and some other justice of the peace, to attend the trial, which notice may be served by the sheriff or any constable; if there be no judge of the county court one other justice of the peace, shall be summoned in his stead to attend, and a majority of the persons thus summoned shall constitute a court for the trial of the offence, and if neither attend, any justice may summon two others forthwith, to attend and try the cause.

Trial for capital offences.

In case of rebellion.

Section 11. It shall also be the duty of the justice making such commitment, to require the sheriff in writing, to summon a jury, to appear at the time appointed for the trial of the accused, and it shall be the duty of the sheriff to summon a jury, possessing the qualifications prescribed by the chapter, entitled grand and petit jury, to consist of twenty-four persons, at least two thirds of whom shall be slaveholders; and if the pannel should be exhausted by challenges or otherwise, the deficiency shall be made up from the by-standers; but no one having an interest in such slave, shall be a competent juror, or sit on the trial.

Juries:

Section 12. In all trials thus to be had it shall be sufficient for the solicitor or counsel, prosecuting for the State, to write out a brief statement of the nature of the crime, and sign his name thereto, to which the accused shall be required to plead; but if he or she refuse, the court shall cause the plea of not guilty to be entered and proceed to the trial of the cause.

Brief.

Section 13. If the owner of any slave should neglect or refuse to employ counsel to defend the prisoner, the court shall assign counsel for that purpose, who shall be authorized to demand from the owner ten dollars for this service; and if any free negro be unable to employ counsel, the court shall assign counsel for his defence, who shall be entitled to a fee of ten dollars, to be paid out of the treasury of the State.

Counsel.

Trials.

Section 14. Trials to be had, as aforesaid, shall be held in the court house of the county, where it shall be the duty of the sheriff and clerk of the circuit court to attend, and the clerk shall keep a record of the proceedings on the minutes of the court.

Subpœnas.

Section 15. It shall be the duty of the clerk of the circuit court or the committing magistrate, to issue all subpœnas or other legal process, as well for the prisoner as the State, which shall be executed by the sheriff or a constable, and for which they shall receive the fees now provided by law for similar services.

If found guilty.

Section 16. If any slave or free person of color, shall be found guilty under this act, it shall be the duty of the court to pronounce sentence, and to cause execution to be done in the manner prescribed by law for white persons; and not more than twenty, nor less than ten days, shall elapse between the time of passing sentence, and such execution, unless delay become necessary on account of the situation of the convict, as provided for in the eighth chapter: and on a conviction for conspiracy, insurrection or rebellion, the sentence may be executed forthwith.

Petit larceny.

Section 17. For the offence of petit larceny, or any offence of a lesser grade, any slave may be tried by any justice of the peace on warrant, and may be sentenced to receive any number of stripes, not exceeding fifty, which sentence shall be executed by the constable; but no justice of the peace shall be authorized to inflict more than thirty-nine lashes, unless he associates with him at least two respectable slaveholders, who concur with him in the propriety of the sentence.

Other offences.

Section 18. All offences committed by a slave of a higher grade than petit larceny, and not capitally punished, which may be committed by slaves, and which, if commited by a white person or a free negro, would, by the provisions of this code, be punished by imprisonment in the penitentiary, shall be tried by the judge of the county court and two justices of the peace, as provided for in this chapter; and the jury shall, by their verdict, direct the punishment to be inflicted, which shall not exceed thirty-nine lashes, or branding in the hand, or both, at their discretion.

Jury to assess value.

Section 19. Whenever, on the trial of any slave for a capital offence, the jury shall return a verdict of guilty, the court shall direct the same jury to be sworn to assess the value of such slave and the verdict ascertaining such value, shall be entered on the minutes of the court; and the master or owner of such slave, producing to the comptroller of public accounts, a transcript from the minutes of the court, certified by the clerk, together with the certificate of the sheriff, that the slave has been executed pursuant t the sentence of the court, shall receive a warrant on the treasure for the value assessed by the jury, to be paid out of the fund fo that purpose provided.

Where master is in fault.

Section 20. It shall be the duty of the prosecuting officer, wher ever he has just cause to believe that the master is to blame f the offence committed by the slave, to introduce testimony to e tablish the fact; and if the jury so find, the master shall recei no compensation whatever; and when a slave is executed upon charge of insurrection, or rebellion, the master shall not be entitled to receive from the State, any part of his value.

Section 21. It shall not be lawful for any free negro or person of color to come into this State, on board of any vessel, as a cook steward, mariner or in any other employment, on board of such vessel; and in case any vessel shall arrive in any port or harbor of this State, from any other State or foreign port, having on board any free negre or person of color employed on board such vessel as a cook, stewart, mariner or in any other employment, it shall be the duty of the harbor-master of the port or harbor, when such vessel may have arrived, forthwith to notify the sheriff of the county in which such port or harbor is situated, of the arrival of such vessel, free negro or person of color; and it shall be the duty of the sheriff of the county in which such port or harbor is situated, immediately on receiving notice from the harbor-master of the arrival of such vessel or vessels, to apprehend such free negro or person of color so arriving, contrary to this act, and to confine him, her or them, closely in jail, until such vessel shall be hauled off from the wharf, and be ready to proceed to sea; and when said vessel is ready to sail, the captain or other commander of said vessel, shall be bound to carry away the said free negro or person of color, and pay the expenses of his, her or their arrest and detention; and in case such captain shall refuse or neglect to pay the said expenses, and carry away the said free negro or person of color, he shall be liable to indictment, and on conviction, be fined, not exceeding one thousand dollars, and imprisoned, not exceeding six months, one or both, at the discretion of the jury trying the offence.

Free negroes coming into the State.

Section 22. Whenever any free negro or person of color shall be apprehended or committed to jail, as having arrived in any vessel as a cook, stewart, mariner or otherwise, contrary to this act, it shall be the duty of the sheriff, during the confinement in jail of such free negro or person of color, to call upon some justice of the peace, to warn such free negro or person of color, never to enter this State after he or she shall have departed therefrom; and such justice of the peace, shall, at the time of warning said free negro or person of color, insert his or her name in a book, to be provided by the sheriff for that purpose; and shall therein specify his or her age, complexion, occupation, height, or distinguishing marks, which entry shall be good and sufficient evidence of such warning; and every free negro or person of color, who shall not depart the State within twenty days after his release from confinement, in case of the captain's refusing or neglecting to carry him or her away, being warned as aforesaid to depart, or having departed, shall ever again enter within the limits of this State, by land or water, he or she, shall, on conviction, be punished by imprisonment in the penitentiary, for two years; and if on his liberation from the penitentiary, he or she does not depart from the State, within thirty days thereafter, he or she, shall, on conviction, be imprisoned in the penitentiary, for the term of five years.

Duty of sheriff.

Section 23. It shall be the duty of the sheriff apprehending any

Sheriff apprehending, &c.

free negro or person of color under the provisions of the preceding section, to demand of the captain of such vessel, or other person bringing such free negro or person of color into this State, a bond with good and sufficient surety, in the sum of two thousand dollars, payable to the judge of the county court, and his successors in office, conditioned that he will not depart this State, without taking with him such free negro or persou of color, and paying all the expenses of apprehending, warning and confinement; and all prosecutions under this act, may be maintained without limitation of time, and all penalities and forfeitures imposed thereby may be recovered in any court of record in this State, and the amount collected, shall be paid by the sheriff collecting the same, to the county treasurer for county purposes.

Fees.

Section 24. The fees to be allowed and paid for the services required in the foregoing sections, shall be to the harbor master two dollars, for giving notice of the arrest of each and every free negro or person of color to the sheriff three dollars, for apprehending and committing; and fifty cents per day while in confinement; and to the justice of the peace for the duties required of him, two dollars; and to the solicitor, for each and every recovery under this act, the sum of twenty dollars.

How proceeded against.

Section 25. Every free negro who shall have come to this State, since the first day of February, one thousand eight hundred and thirty-two, otherwise than as aforesaid, and shall have been admonished by any sheriff, justice of the peace, or other judicial officer, that he cannot remain in this State, and shall not, within thirty days thereafter depart from the same, shall on conviction be punished by imprisonment in the penitentiary for two years, and shall have thirty days after his discharge from the penitentiary to leave the State, and on failing to do so, shall on conviction be punished by imprisonment in the penitentiary for the term of five years.

To notify negroes.

Section 26. It shall be and is hereby made the duty of all sheriffs, justices of the peace, and all other judicial officers to give warning to and admonish all free negroes within their jurisdiction who have come to this State, since the first day of February, eighteen hundred and thirty-two, that they cannot, by law, remain within the same.

Sheriff to apprehend.

Section 27. It shall be the duty of all sheriffs to apprehend all free negroes who remain within this State contrary to the provisions of the preceding sections, and cause them to be dealt with according to law.

Commissioners to report to Governor.

Section 28. *And be it further enacted*, That it shall be the duty of the commissioners of the penitentiary to report to the Governor of the State of Alabama, when the penitentiary building shall be ready for the reception of convicts; and that thereupon proclamation be made by the Governor of that fact; and that from and after the date of said proclamation, this act shall be in full force and effect: *Provided*, that offences committed prior to the date of the said proclamation, be proceeded against and punished as theretofore: *And provided further*, that all laws and parts of laws coming in conflict with the provisions of this act, be and the same are hereby repealed, except as to any crime or punishment, enumerated or provided tor by this bill: *Provided*, the Governor shall not issue his proclamation before the first day of October next. Approved, January 9, 1841.

Proviso.

Proviso.

Proviso.

JOINT RESOLUTIONS AND MEMORIALS.

JOINT MEMORIAL,

To the Congress of the United States.

Whereas, it appears by a report of the Committee on Foreign Affairs of the Congress of the United States, made on the fourth day of April, one thousand eight hundred and forty, that John Marrast, Jr. for John Marrast, and A. J. Cotton, administrator of John Smith, deceased, citizens of the State of Alabama, have petitioned the Congress of the United States, on account of French spoilations committed prior to eighteen hundred: Therefore

Be it resolved by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That our Senators and Representatives in the Congress of the United States, be requested to use their exertions to secure for our citizens, all the compensation for French spoilations to which they may be entitled, or which, by treaty with France or otherwise, may be constitutionally provided and secured.

Resolved further, That his Excellency, the Governor of this State, be, and he is hereby requested to transmit to our Senators and Representatives in Congress a copy of these resolutions.

Approved, January 9th, 1841.

JOINT RESOLUTIONS,

Of the Senate and House of Representatives in relation to certain notes therein specified.

Resolved by the Senate aud House of Representatives of the State of Alabama in General Assembly convened, That the Cashier of the Bank of the State of Alabama, at Tuscaloosa, be, and he is hereby authorized and required to return and deliver over to William Murphy, Walter Chiles, John May, William Yarborough, John Fitts, and Henry Fort, upon application by the parties, the notes given by them respectively, for the purchase of the sixteenth section, in township eighteen, of range two, west, in Sumter county, and which said notes are now deposited for collection, on account of said section, in the Bank of the State of Alabama.

And be it further resolved, That the Cashier aforesaid, is hereby authorized and required to refund to the above named parties, and all monies paid in bank by them, in consideration of the purchase of the said sixteenth section, upon their making application for the same.

Approved, January 7th, 1841.

JOINT RESOLUTIONS,

Of the General Assembly of the State of Alabama, in response to certain resolutions of the State of Maine, in relation to the North Eastern Boundary question.

1. *Be it resolved by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That we hold it to be the solemn and imperative duty of the Federal Government, faithfully to maintain towards the State of Maine, every obligation she is under in justice, honor, or compact touching the establishment of the North Eastern Boundary, of said State.

2. That said government is further bound in defence of her own honor, not to concede to Great Britain, any claim, not strictly founded in right and justice in the matter aforesaid.

3. That we sincerely deprecate a resort to force, until every honorable, peaceful expedient has been exhausted, in this and every other like controversy.

4. That the question of the North Eastern Boundary, concerns the whole Union, and is not one, local in its character to the State of Maine, although she is confessedly more directly interested than any other, in its adjustment; and that for the reason here set forth, it is the duty of the State of Maine, to trust the decision of the matter to the councils of the Union, and abide thereby, whatever it may finally be, whether exactly consistent with her wishes or not; if Congress says, go to war, we will cheerfully obey the mandate, but we should deeply regret to see the State of Maine take any rash step, which might tend to plunge her sister States into war, more through mere feeling and sympathy, than from deliberate choice and determination, on their part.

5. That the Governor of this State be requested to forward to the Governor of Maine, a copy of the foregoing resolutions, as the response of this General Assembly to her resolutions of the eighteenth of May last, communicated to us by the Governor of this State, agreeably to a request contained in her said resolutions.

Approved, 31st December, 1840.

JOINT RESOLUTION,

In relation to the Branch Bank of the State of Alabama, at Decatur.

Be it resolved by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That the commissioners appointed by his Excellency, the Governor, to examine the Branch of the Bank of the State of Alabama, at Decatur, and the President and Cashier, of said Branch Bank, be, and they are hereby permitted to delay there respective reports to this legislature, until the thirtieth instant, and that all penalities and forfeitures, arising from a failure to make an earlier report, be, and the same is hereby remitted, any law to the contrary notwithstanding.

Approved, 13th November, 1840.

JOINT RESOLUTION,

In relation to the Public Arms.

Whereas, in the opinion of this General Assembly, the place where the public arms, belonging to the State of Alabama, are deposited, is unsafe, and at all times accessible to robbers, or malicious persons: Therefore,

1. *Be it resolved by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That the Governor, be, and he is hereby requested to have all the public arms, in the arsenal at this place, immediately removed from where they now are, and placed in a more safe and secure depository, to be provided by him for that purpose.

2. *Be it further resolved,* That the sum of, not exceeding twenty-five hundred dollars, is hereby appropriated and set apart for the erection of an arsenal: *Provided,* in the opinion of the Governor, the same be necessary for the safe keeping of the public arms, and in the event the erection of an arsenal may be deemed necessary, as aforesaid, the same shall be erected under the superintendence of the Governor, and the commissioners heretofore appointed under the provisions of an act entitled, "An act providing for the erection of a State Capitol," or such of said commissioners as may be now in office, and the said arsenal shall be erected at such site and on such plan as may be selected by the Governor and commissioners.

3. *And be it further resolved,* That if there is not now a sufficient number of the commissioners in office to constitute a quorum, that all vacancies shall be filled by the Governor, as provided in the act above referred to.

Approved, January 9th, 1841.

JOINT RESOLUTION,

In relation to the appropriation made by Congress to Hart and Bosworth and John Hart, of Irwinton, Alabama.

Resolved by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That the Comptroller of Public Accounts, be requested to procure from the War Department, an exact account for which Congress, at the last session appropriated to Hart and Bosworth, merchants of Irwinton, Alabama, and of John Hart, merchant of the same place, a sum not to exceed two thousand three hundred and eleven dollars and ninety cents, and to lay the same before the legislature as soon as possible.

Approved, December 1st, 1840.

PREAMBLE AND RESOLUTIONS,

Of the General Assembly of the State of Alabama, responsive to certain resolutions of the State of Connecticut, in favor of the protective policy.

Certain resolutions of the State of Connecticut, have been communicated by the Governor of this State, to this General Assembly, agreeably to a request contained in said resolutions, which express sentiments in favor of which they designate 'the protective policy of our government;' and contain a request to the Senators and Representatives in Congress from said State, to resist by all constitutional means, any attempt to destroy or impair said policy, and to use their exertions to procure the passage of such laws as will effectually protect the labor of this country from the policy and legislation of foreign governments. The said resolutions further signify that it is the wish of our sister State, to obtain from us, an expression of our sentiments on the subject to which her said resolutions relate.

It becomes us in courtesy, under such circumstances, to make answer, which we proceed respectfully to do as follows:

We presume we properly comprehend the State of Connecticut, as intending by the words 'protective policy of our government,' in her aforesaid resolutions, a protective tariff, and by the words 'labor of this country,' the manufacturing labor of this country. So understanding our sister State, we cannot forbear expressing our surprise and regret to find, that she should feel it incumbent on her to press this fruitful source of discord and distraction, upon the attention of Alabama and the south, at this time. Two years in advance of the expiration of that 'compromise,' which has for a period, allayed the fierce and angry passions to which the 'protective policy' had heretofore given rise. But as she has thought proper to call upon us, for our sentiments on this subject, we proceed to give them fully embodied in the following resolutions, the principles of which we would kindly, but firmly admonish our sister Connecticut, that we are determined to maintain at every hazard.

1. *Be it therefore resolved unanimously, by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* 'That that the government of the United States was established, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, and promote the general welfare,' to and among the several separate and sovereign States of this Union, and to secure the blessings of liberty to us and our children, as citizens of said States.

2. *Resolved unanimously,* That said government never can establish justice, insure domestic tranquility, or promote the general welfare of this widely extended Union, and the diversified interests and pursuits thereof, especially in view of their peculiar relations aforesaid, by enacting laws to foster, promote and protect the industry and occupation of one portion of the States or people, to the disparagement, injury and expense of another.

3. *Resolved unanimously,* That a tariff, for the protection of manufactures always was, and always must remain obnoxious to the objections set forth in the foregoing resolution, and that consequently, every such measure always has been and ever will be, in our estimation, unwise, unjust and unconstitutional.

4. *Resolved unanimously,* That in the solemn and deliberate opinion of this General Assembly, a successful attempt to re-establish the 'protective policy,' while it cannot fail to alienate the feelings of one portion of our happy Union from another, and provoke fierce political animosities between the North and the South, ultimately and irresistably tends to a dissolution of the Federal compact between these States: That in view of such consequences, we earnestly and affectionately dissuade our Northern brethren from any such attempt.

5. *Resolved unanimously,* That the Governor of this State, be requested to forward a copy of the foregoing preamble and resolutions to the Governor of the State of Connecticut, and the Governors of each of the other States; and also, copies to each of our Senators and Representatives, the former of whom are instructed, and the latter requested, to use all honorable and proper means to sustain the principles therein set forth.

JOINT RESOLUTION,

Of the Senate and House of Representatives of the State of Alabama, in General Assembly convened, requiring the Secretary of State to furnish the printer with a copy of the acts so soon as approved by the Governor.

Resolved, by the Senate and House of Representatives of the State of Alabama, in General Assembly convened, That the Secretary of State be required to furnish the State Printer with copies of the acts passed at this session, so soon as approved by the Governor.

Approved, December 1, 1840.

JOINT RESOLUTION,

Authorizing Thomas Wilson to draw and receipt for the pay of George R. Griffin, deceased, late a member of the House of Representatives, from the county of Jackson.

Resolved, by the Senate and House of Representatives of the State of Alabama, in General Assembly convened, That Thomas Wilson be and he is hereby authorized, to draw and receipt for the pay of George R. Griffin, deceased, late a member of the House of Representatives from the county of Jackson, and that the receipt of the said Wilson, shall to all intents and purposes, be as valid and binding as though made by the said George R. Griffin in person, were he living, any law, usage or custom, to the contrary, notwithstanding.

Approved, January 7, 1841.

JOINT MEMORIAL AND RESOLUTIONS,

To the Senate and House of Representatives of the United States in Congress assembled.

The memorial of the General Assembly of the State of Alabama, most respectfully represents, That in the late Creek War with the Creek Indians, the State of Alabama expended and has actually paid, from one hundred and twenty-five to one hundred and fifty-thousand dollars, as will appear from a statement certified by the Comptroller and Treasurer, and now on file in the War Department; and owing to the irregularities and difficulties inseparable from Indian warfare, it is impossible to present vouchers, conformable to the requirements of the War Department. Your memorialists are, nevertheless, fully satisfied that the whole amount expended and paid by the State of Alabama, constitutes an equitable claim upon the government of the United States. They therefore pray your honorable bodies to take the subject into consideration, and to provide for the payment of the same, in such manner as the wisdom and liberality of Congress may seem meet, and as in duty bound, they will ever pray.

Resolved, That our Senators be instructed, and Representatives be requested, to urge said claims on the favorable attention of Congress.

Resolved, That a copy of this memorial be forwarded to each of our Senators and Representatives in Congress, by the Governor, with a request it be submitted to each of their respective Houses.

Approved, January 9, 1841.

PREAMBLE AND JOINT RESOLUTIONS,

Of the General Assembly of the State of Alabama, in relation to the establishment of a Land District, in the Cherokee Nation, &c.

Whereas, economy in the management of the affairs of a nation, is at all times desirable; and whereas, the continuance of the Land Office at Mardisville, in the State of Alabama, is no longer justified by public convenience, or any other just public consideration, but involves the Government in a useless expenditure of the public treasure. And whereas, it is highly desirable that a Land Office should be established in the Cherokee territory, belonging to this State; and whereas, the annexation of the Cherokee territory to the Coosa land district would not make a larger land district, than the Tallapoosa land district,

Be it therefore resolved, by the Senate and House of Representatives of the State of Alabama, in General Assembly convened, That our Senators and Representatives in Congress, be requested to use their best efforts to procure the removal of the Land Office at Mardisville from its present location to some eligible place in the Cherokee territory.

Resolved, That his Excellency the Governor of this State be requested to send a copy of this preamble and these resolutions, to each of our Senators and Representatives in Congress.

JOINT RESOLUTION,

Responsive to certain Resolutions of South Carolina, in relation to the Georgia and Maine Controversy.

The committee on federal relations, to whom was referred certain joint resolutions of the Legislature of South Carolina, in relation to the Georgia and Maine controversy, have had the same under consideration, and beg leave to report, that after a careful examination of the facts and circumstances set forth in the preamble to said joint resolutions, connected with the felonious, stealing and carrying away the slave, Atticus, by Daniel Philbrook and Edward Kilbron, from the State of Georgia, and transporting him to the State of Maine; and the refusal of the Executive of the State of Maine to surrender said Philbrook and Kilbron, as fugitives from justice, upon demand made by the Governor of Georgia, pursuant to the provisions of the Federal Constitution, they have come to the conclusion that the demand made was legal and proper;—that the right was clear under the constitution, and the refusal to surrender was inconsistent with the constitutional obligations of a State. They therefore concur in the following resolutions of said State, and recommend their adoption by the General Assembly of this State:

1. *Resolved*, That it is the duty, as well as the right, of any State, to insist on the faithful observance of the Federal Constitution, by each State in the Union.

2. *Resolved*, That to define crimes and felonies within its jurisdiction, is an incident to the sovereignty of each State, and that no other State can question the exercise of that right.

3. *Resolved*, That to demand the surrender and removal of fugitives from justice, is, by the Constitution, a right, and the arrest and surrender, a duty; the denial or impairement of this right, is inconsistent with the constitutional obligations of a State, and subversive of the peace and good government of the other States.

4. *Resolved*, That the right has been impaired, if not denied, by the authorities of Maine; and that this State will never consent, that any State shall become an asylum for those who are fugitives from the justice of other States.

5. *Resolved*, That this State will make common cause with any State of this confederacy, in maintaining its just rights under the guarranty of the Constitution of the United States; and should the obligations of this instrument be disregarded by those whose duty it may be to enforce them, it will take council of its co-States, of this confederacy, having similar interests to protect and similar injuries to redress, in devising and adopting such measures as will maintain, at every hazard, these rights; and that property, which the obligations of the compact of union, cancelled as they then will be, as to us, have failed to enforce.

6. *Resolved*, That the Executive of this State, be requested to transmit to the Executives of the several States, to be laid before their respective Legislatures, to the President of the United States, and to our Senators and Representatives in Congress, a copy of the above report, and of these resolutions.

JOINT RESOLUTION

In Relation to the Supreme Court Decisions.

Be it resolved by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That the Secretary of this State, be, and he is hereby directed to send to the Executive of each of the States of the Union, a copy of the decisions of the Supreme Court of this State, commencing with the first volume of Porter's Reports, and such as may be hereafter published.

Resolved, That the Secretary of State be required to deposit in the library of the Supreme Court, all the decisions of the Courts of other States that are now, or may be hereafter sent to his office.

And be it further Resolved, That all the volumes of decisions of the Supreme Court of this State, up to ninth Porter's Reports, inclusive, belonging to the State, and not otherwise disposed of, be sold by the Governor of the State of Alabama, at the price of three dollars per volume, on such time of payment and security, as he may deem best. Except that, four copies of each of the volumes, be retained; of which two copies shall be deposited in the office of the Secretary of State, and two in the library of the Supreme Court, for the use of the several departments of the Government.

Approved, December 15, 1840.

JOINT MEMORIAL

Of the General Assembly of the State of Alabama, to the Congress of the United States, in relation to a Land District, in the Cherokee Nation.

Your memorialists beg leave to represent to your Honorable Body, that the portion of the late Cherokee Nation, which is in the State of Alabama, forms three entire counties, which are settled with a dense population; and very great inconvenience to the people will be occasioned by attaching those counties to any one or more of the Land Districts now established in Alabama. Your memorialists, therefore, ask that a Land Office be established at some convenient point in one of the counties in the late Cherokee Purchase.

Resolved, That our Senators in Congress be instructed, and our Representatives requested, to use their best efforts to pass a law in accordance with the foregoing memorial, as well as for the passage of a law reducing the minimum price of the public lands.

Resolved, That the Governor be instructed to transmit a copy of the foregoing memorial and resolutions to each of our Senators and Representatives in Congress.

Approved, December 4, 1840.

JOINT RESOLUTION

Authorizing the Governor to cause Gold Medals to be made and presented to Miss Mary McKerly and Sisters.

Be it Resolved by the Senate and House of Representatives of the State of Alabama, in General Assembly convened, That his Excellency, the Governor, be, and he is hereby authorized to cause to be made and presented to Miss Mary McKerly and Sisters, three gold medals, bearing appropriate inscriptions and devices, the cost of which shall not exceed sixty dollars, as a testimony of the regard entertained by this General Assembly, for their skill, industry and enterprize, in the culture and manufacture of silk.

Approved, January 5, 1841.

JOINT RESOLUTION

Of the Senate and House of Representatives of the State of Alabama, requiring the Attorney General to perform certain things therein specified.

Resolved by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That the Attorney General be required to take such measures, if there be any legal means by which it can be done, to recover back for the State, a certain amount of money which may have been improperly appropriated, and paid to Hart & Bosworth and John Hart, merchants of Irwinton, in this State, by an act of the Legislature, approved, 9th January, 1840.

Approved, January 9, 1841.

DEPARTMENT OF STATE,
Tuscaloosa, Ala. March 24th, 1841,

I have carefully examined the foregoing Acts, Memorials, and Resolutions, and find them to be true copies of the original rolls in this Office.

W. GARRETT,
Secretary of State.

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